

Vol. III
TRANSCRIPT OF RECORD

27

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Supreme Court of the United States

OCTOBER TERM, 1923

No. 240

BEECH-NUT PACKING COMPANY, PETITIONER,

vs.

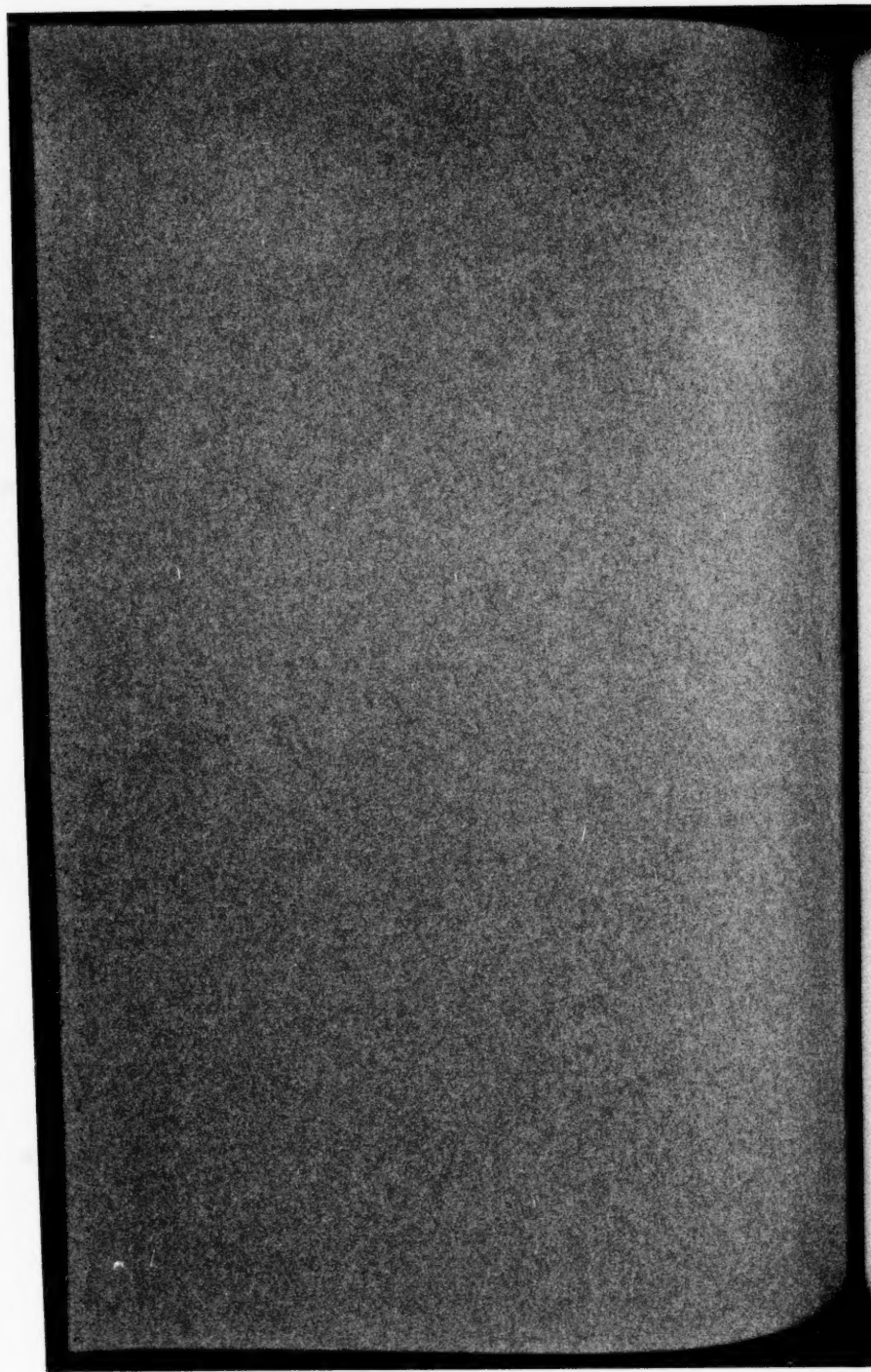
P. LOBILLARD COMPANY

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR HABEAS CORPUS FILED DECEMBER 8, 1923

HABEAS CORPUS GRANTED JANUARY 11, 1924

(31,557)



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IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company, Plaintiff,	}	In Equity No. 3056
vs.		
P. Lorrillard Company, Defendant.		

VOLUME II.

DEFENDANT'S RECORD.

ILLINOIS WITNESSES CONTINUED.

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Chicago, February 8, 1923,
2:00 o'clock p. m.

Parties met pursuant to recess.

PRESENT: Counsel as before.

WILLIAM G. SUES, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

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Direct Examination.

By Mr. Cavanagh:

Q.1. Will you please state your name, age, residence and occupation?

A. William G. Sues; age, fifty-nine years; residence, 3123 Broadway; occupation, cigar clerk.

Q. 2. For what concern and where are you employed?

A. Albert Breitung, 134 South La Salle Street.

Q. 3. Is that in the Corn Exchange Bank Building?

A. It is in the Corn Exchange Bank Building; yes, sir.

340

Q. 4. How large is that store there, is it a small store?

A. Just an inside stand.

Q. 5. How long have you been employed at this stand in the Corn Exchange Bank Building?

A. About five years.

Q. 6. Regularly all that time?

A. Yes, sir.

Q. 7. Are there any other clerks employed at that stand?

A. There is a relief clerk. I am the only regular clerk, but a clerk relieves me at the lunch hour. 234

Q. 8. As I understand it, this other clerk is only there during the lunch hour?

A. Yes, sir.

Q. 9. And how long has that same relief clerk been working there, do you know?

A. Oh, he has been working there about six weeks.

Q. 10. Did you have any relief clerk before that?

A. Yes, sir; they keep changing them all the time.

Q. 11. But you are there steadily, all day?

A. Yes, sir.

Q. 12. You are the regular clerk? 234

A. Yes, sir.

Q. 13. At this stand did you ever handle the Beech-Nut cigarette?

A. Yes, sir.

Q. 14. And Beech-Nut Scrap tobacco?

A. No; just the cigarettes. We do not carry much tobacco. It is a small stand.

Q. 15. Did you ever handle the Beech-Nut gum at that stand?

A. Beech-Nut gum; yes, sir.

Q. 16. And the Beech-Nut mints?

A. Beech-Nut mints; yes, sir. 234

Q. 17. Do you know who makes the Beech-Nut cigarette, what concern?

A. I do not know the concern's name, just called the Beech-Nut Company, I think. I do not know the people behind it.

Q. 18. I am talking about the Beech-Nut cigarette.

A. Oh, cigarettes! The Lorillard Company.

Q. 19. Do you know what concern makes the gum?

A. I do not know who the persons or the people are in the gum business.

Q. 20. How long have you known of the P. Lorillard Company?

2344 A. Oh, forty or fifty years.

Q. 21 Do you know what line of business they are in?

A. Tobacco manufacturers; cigarettes; tobaccos.

Q. 22. How long did you know the Lorillard Company to make the Beech-Nut cigarette, or to be the manufacturers of the cigarette?

A. The cigarettes? Just a couple of years.

Q. 23. While you have been at that counter did you ever have any relief clerks there for any extended period of time, such as three or four years, only for the relief work there, that length of time?

2345 A. No, sir; they change them about every two months.

Q. 24. Your hair is gray, is it not, Mr. Sues?

A. Yes, sir.

2346 Q. 25. Now, it has been testified in this case by Mr. Darrell S. Boyd, on behalf of the plaintiff, that he made certain purchases of Beech-Nut cigarettes at the stand at the Breitung tobacco stand in this Corn Exchange Bank Building, and he testified, in substance, that he asked the clerk back of the counter, whom he had seen there for three or four years and who was a gray haired man about fifty years old, "if the cigarettes were made by the same company who marketed the Beech-Nut bacon, and other well known Beech-Nut products", and that the clerk said it was; that they were products of the same company that got out Beech-Nut bacon and Beech-Nut candy and Beech-Nut gum and various other Beech-Nut products; and that he then called the attention of the clerk to the name "P. Lorillard Company" on the package of cigarettes and asked, "What does P. Lorillard on the label mean," and that this clerk said, "Oh, they are all made by the same company"; and that he said, "The P. Lorillard Company is not the company that gets out Beech-Nut bacon", and the clerk said, "No but they are all made by the same concern; the Beech-

Nut Packing Company owns and controls the P. Lorillard Company. It is all the same crowd." Do you ever recall having made such a statement? 2347

Mr. Johnson: Objection by Mr. Johnson to this question as grossly leading. Counsel for Beech-Nut Packing Company objects to the manner in which Mr. Cavanagh approaches this question in presenting this inquiry.

Mr. Cavanagh: This question is in the nature of rebuttal of certain testimony produced by plaintiff, and it is not seen how the question can be leading as, according to the rules of evidence, one is entitled to direct the attention of a rebuttal witness to the state of facts which he is called to rebut. 2348

A. No, sir, I never had such a conversation.

Mr. Johnson: I want to add to that objection our objection as to the manner in which Mr. Cavanagh approaches this question.

Q. 26. Has there ever been any reason for you to make such a statement?

A. No, sir. It would be ridiculous for me to make any such statement because Lorillards were the biggest tobacco concern in the country and Beech-Nut Candy Company wouldn't have any interest in that, to run that factory for P. Lorillards. 2349

Q. 27. And when you were handling the cigarette, the Beech-Nut cigarette, you knew what concern manufactured it?

A. Yes, sir; P. Lorillards; see right on the carton.

Q. 28. While you were selling the Beech-Nut cigarette at this stand, did you ever hear of any remarks or questions from customers to the effect or which would lead

2350 you to believe that they thought this Beech-Nut cigarette was made by the same people that make the Beech-Nut gum?

A. No, sir.

Cross Examination.

By Mr. Bulkley:

X-Q. 29. Did you ever have any conversation, Mr. Sues, with a customer in connection with Beech-Nut cigarettes sold by you?

A. No, sir.

2351 X-Q. 30. I understand you never had any talk with anybody concerning Beech-Nut cigarettes at any time?

A. Just when we want to sell them, I would speak up for the cigarettes because they were something new.

X-Q. 31. What would you say, as you now recollect it, when you talked to the customers about Beech-Nut cigarettes?

A. I would say, "Here is some new cigarettes, P. Lorillard's got out; ought to try them; they seem to be taking well."

X-Q. 32. And that is the only conversation or the only kind of a conversation you had about Beech-Nut cigarettes with any customer?

A. With any customer; yes, sir.

X-Q. 33. During the whole of the time—

A. Yes, sir.

X-Q. 34. —that you were selling Beech-Nut cigarettes?

A. During the whole of the time; yes, sir.

X-Q. 35. Did you tell the customers whenever you presented them with the new Beech-Nut cigarettes that they were manufactured by P. Lorillard?

A. They could see it right on the stand, that was

right on the show case, set out just like that (illustrating); they could see the name on there. 2353

X-Q. 35. That is not what I asked you.

A. Yes, sir.

X-Q. 37. What I did ask you was whether you ever told the customer that these new Beech-Nut cigarettes were made by the P. Lorillard Company?

A. I told them they was made by P. Lorillard Company; yes, sir.

X-Q. 38. And in every case that you told them that you wanted them to try a new cigarette, you told them that it was manufactured by the P. Lorillard Company?

A. Yes, sir.

2354

X-Q. 39. In every instance?

A. Every case; yes, sir.

X-Q. 40. Do you remember what any of the customers said to you when you thus presented them with this new cigarette and advised them to purchase it?

A. They said they would try them.

X-Q. 41. Did they ever say they would not try them or didn't want to try them?

A. Said they would be used to some other cigarette; they would not want to change.

X-Q. 42. Why did you invariably, as you say, tell them that the cigarette was manufactured by P. Lorillard Company? 2355

A. I do in all cases with a new cigarette tell them who is the manufacturer of it; it takes better.

X-Q. 43. Don't you know that customers generally buy cigarettes without knowing who the manufacturers of them are?

A. Oh, no, they want to know who makes the cigarette. Any new cigarette comes out, they want to know who is the manufacturer of those cigarettes.

X-Q. 44. Have you found it to be most invariably the

2356 case if you do not tell them who manufactured the cigarettes they would not take them?

A. Yes, sir.

X-Q. 45. Don't you think that those who purchase cigarettes are largely guided by the brand on the cigarette package in determining whether they want it?

A. They are guided by the manufacturer who makes the cigarette.

X-Q. 46. They are not influenced by the brand?

A. No, sir, not at all.

2357 X-Q. 47. Don't you know the Lorillard Company puts out a good many cigarettes that do not have their name on them?

Mr. Cavanagh: I object to your constant effort to bulldoze this witness. This is not a police court.

Mr. Bulkley: You say this on the record?

2358 Mr. Cavanagh: I call the attention of the court to the fact that Mr. Bulkley is leaning over this witness, a rather elderly gentleman, and shouting his questions at him in an unseemly manner, and this is not a police court. Counsel for Lorillard Company objects to that kind of examination. I want you to stop trying to bulldoze that man. Let him answer things and treat him right.

Mr. Bulkley: Read the question.

(The question was read.)

A. They do not have to have their name because they have been in the market so long everyone knows the P. Lorillard Company is the manufacturer.

X-Q. 48. Do you think you could tell, if I gave you the names of cigarettes whether they were manufactured by the P. Lorillard Company?

A. Yes, sir.

X-Q. 49. In every instance?

A. Pretty near all cases; yes, sir.

2359

X-Q. 50. I asked you whether in every instance you know?

A. Yes, sir, in all cases.

X-Q. 51. Now, who manufactures the Camel cigarettes?

A. Camel cigarettes?

X-Q. 52. Yes.

A. I can't call just the name now.

X-Q. 53. Sell a good many Camel cigarettes, do you not?

A. Yes, sir.

X-Q. 54. About how many a week?

2360

A. Oh, it varies; different.

X-Q. 55. About how many a week, I asked.

A. Oh, about ten thousand.

X-Q. 56. Who manufactures the Mogul cigarettes?

A. P. Lorillards.

X-Q. 57. Do you know the names of any other brands of cigarettes manufactured by P. Lorillard?

A. Yes, sir.

X-Q. 58. Will you state them?

A. Murad, Helmar, Deities.

X-Q. 59. Is that all?

A. All I just think of now.

2361

X-Q. 60. Do you know whether the name P. Lorillard Company is upon the package of Deities cigarettes?

A. I can't remember just now.

X-Q. 61. Do you know whether it is on the Beech-Nut Murad cigarettes?

A. I can't answer that.

X-Q. 62. Do you know whether the name P. Lorillard Company is on the package of Helmar cigarettes?

A. I can't tell you now.

X-Q. 63. Do you know who manufacturers a cigarette called the London Life?

- 2362 A. No, sir.
X-Q. 64. Did you ever sell any such cigarettes?
A. Yes, sir.
X-Q. 65. About how many do you suppose you have sold of those cigarettes?
A. Oh, quite a lot of them.
X-Q. 66. Do you still continue to sell them?
A. Yes, sir.
X-Q. 67. Who manufactures the cigarette known as the Lucky Strike?
A. I couldn't tell you.
X-Q. 68. Do you know whether the Lorillard Company manufactures them or not?
2363 A. I couldn't tell you.
X-Q. 69. Do you know who manufactures the Fatima cigarette?
A. Couldn't tell you.
X-Q. 70. Do you know whether the Lorillard Company manufactures them or not?
A. I couldn't tell you.
X-Q. 71. Do you know who manufactures the Chesterfield cigarette?
A. I couldn't tell you.
X-Q. 72. You don't know whether the Lorillard Company manufactures them or not?
2364 A. I couldn't tell you.
X-Q. 73. Do you know who manufactures the Philip Morris cigarette?
A. I couldn't tell you.
X-Q. 74. And you don't know whether the Lorillard Company manufactures it or not?
A. I couldn't tell you.
X-Q. 75. And the Pall Mall cigarette?
A. I couldn't tell you.
X-Q. 76. Don't know who manufactures it?
A. No, sir.

X-Q. 77. Or whether the Lorillard Company manufactures it or not? 2865

A. No, sir.

Cross Examination.

By Mr. Johnson:

X-Q. 78. How long have you been in the tobacco trade, Mr. Sues?

A. Oh, about forty years.

X-Q. 79. Do you know Mr. Darrell S. Boyd?

A. No, sir, I do not.

X-Q. 80. Whose office is in the Corn Exchange Bank Building? 2366

A. No, sir, I do not.

X-Q. 81. Are you kept pretty busy at your stand?

A. Yes, sir, going all the time.

X-Q. 82. About how many customers a day would you say you had?

A. About nine hundred.

X-Q. 83. Do you have much time to talk with them?

A. Very few—very little.

X-Q. 84. Is any part of the day more dull time than others? 2367

A. No, it keeps going from the time I open up until I close.

X-Q. 85. Has anyone ever asked you who makes the Beech-Nut cigarettes?

A. Beech-Nut cigarettes?

X-Q. 86. Yes.

A. No, sir.

X-Q. 87. No one has ever asked you?

A. No, sir.

X-Q. 88. Have you made any effort to remember instances where people might have asked you who made

2368 the Beech-Nut cigarettes or whether they were made by the same people as the Beech-Nut gum?

A. No, sir.

X-Q. 89. Have you had reason to try to remember such incidents?

A. No, sir, never had any conversation on that at all.

X-Q. 90. Have you made any attempt to remember such a question?

A. Yes, sir, I have got a good memory. I can remember away back.

X-Q. 91. But you are kept pretty busy at that stand?

A. Yes, sir.

2369 X-Q. 92. Very busy, in fact?

A. Oh, going all the time.

X-Q. 93. When did you first see a package of Beech-Nut cigarettes?

A. That is about two or three years ago.

X-Q. 94. Can you tell a little closer than that?

A. No, I couldn't get any closer than that.

X-Q. 95. You can remember exactly, or even within a year of when you first saw them?

A. No, sir.

X-Q. 96. Do you know when the Beech-Nut cigarettes were first put on the market in Chicago?

2370 A. I couldn't tell you.

X-Q. 97. Were you selling cigarettes at that time?

A. Yes, sir, we carry a certain amount, because this is a small stand we can't carry everything; get out anything new they send it over and we give it a try-out to see how it goes; put it on our show case so customers can see what we got, something new.

X-Q. 98. But you can't remember when the Beech-Nut cigarette first came on the market?

A. No, sir, I couldn't tell you.

X-Q. 99. When did you first hear of the Beech-Nut cigarette?

A. When they sent some over to my stand to see what I could do with them, to see how they would take with the customers. 2371

X-Q. 100. When was that?

A. Oh, it might have been about two to three years ago; I can't remember just the time.

X-Q. 101. Have you ever discussed with anyone who makes the Beech-Nut cigarettes?

A. No, sir, I did not.

X-Q. 102. Not even one person?

A. No, sir.

X-Q. 103. How have the Beech-Nut cigarettes sold at your stand? 2372

A. At that time they were sold for fifteen cents.

X-Q. 104. I mean have you sold many or few?

A. It did take at first, but after while they didn't take so well, so we didn't keep them any more.

X-Q. 105. Did many people buy them the second time?

A. Quite a few bought the second time, but if a cigarette don't take well you take them off the stand. If you don't get rid of them, they get stale and dry up.

X-Q. 106. Have you heard any complaints as to the Beech-Nut cigarette?

A. No, they said it was a good cigarette, but they rather have what they are used to. Pretty hard to change people on cigarettes. 2373

X-Q. 107. How are they selling now?

A. I don't know what the price is on them now.

X-Q. 108. Are you selling any of them now?

A. No. The other stands are selling them. I haven't got any at my stand.

X-Q. 109. What do you mean by "the other stands"?

A. Breitung has twelve stands in all in the Loop. What takes in one stand won't take in another place. Lot of stands only have cigarettes and cigars and don't

2374 have to attend to any candies or anything like that; give more attention to it.

X-Q. 110. Do you sell many Beech-Nut mints?

A. Yes, have quite a trade on them.

X-Q. 111. Sell much Beech-Nut gum?

A. Yes, sir.

X-Q. 112. Did you ever have anyone come to your stand and ask just for Beech-Nut?

A. No, sir. Always say they want the gum. When they seen the cigarettes on the show case, then they would call for gum, Beech-Nut gum.

2375 X-Q. 113. Ever have anyone ask you just for Beech-Nut?

A. No, sir.

Mr. Johnson: That is all.

Re-direct Examination

By Mr. Cavanagh:

R-D Q. 114. Now, you have stated when they saw the Beech-Nut cigarettes on the show case they would call for Beech-Nut gum?

A. Yes, sir.

2376 R-D Q. 115. What do you mean by that?

A. So as not to make a mistake, hand them out cigarettes in place of gum, you see. Cigarettes right alongside the candy, right close to it, and the gum was right there, and they would say gum or cigarettes.

R-D Q. 116. So they would distinguish them?

A. Disfinguish both kinds.

R-D Q. 117. Now, in your cross-examination you were asked by Mr. Bulkley as to what concerns made certain brands of cigarettes?

A. Yes, sir.

R-D Q. 118. What companies, and you said you did not know. While you were under that examination did you really make any attempt to try to remember who made those? 2377

A. No, I did not.

R-D Q. 119. You were upset by the manner of your cross-examination, were you?

A. Yes, sir.

R-D Q. 120. You are rather an elderly man?

A. Yes, sir.

Mr. Cavanagh: That is all.

Re-cross Examination.

2378

By Mr. Bulkley:

R-X Q. 121. Will you now try to cast your memory about and see if you can tell us who are the manufacturers of those cigarettes to which I directed your attention on cross-examination?

Mr. Cavanagh: The question is objected to as indefinite. Let him mention the cigarette brand he wants to know about.

Mr. Bulkley: Will you read the question?

2379

(The question was read)

A. I could not answer that now.

R-X Q. 122. Can you tell us who manufactures the Fatima cigarette? And you may take all the time you see fit in order to give me the name of the manufacturer, if you can.

A. I cannot recall just now.

R-X Q. 123. Have you taken, do you think, adequate time in an effort to recollect the name?

A. I can't remember just now.

80 R-X Q. 124. How much time do you want to take in order to recollect sufficiently?

A. Well, I couldn't tell you now.

R-X Q. 125. How much time do you want to take in order to recollect sufficiently?

A. I couldn't tell you now.

R-X Q. 126. If I will give you more time to think about it, do you think you could recollect the name of the manufacturer of that cigarette?

A. No, not this afternoon.

81 R-X Q. 127. Well, now, take the Chesterfield cigarette and take what you deem to be adequate time in an effort to remember who the manufacturer was.

A. No, sir.

R-X Q. 128. You can't tell?

A. No, sir.

R-X Q. 129. Well, as to the Helmar cigarette, taking sufficient time—

A. P. Lorillard.

82 R-X Q. 130. How does it happen that you can recollect who the manufacturer of those brands is, such as the Mogul and Murad, Helmar and Egyptian Deities, that they are manufactured by the Lorillard Company, and you don't seem to recollect who are the manufacturers of these other conspicuous cigarettes? How do you account for that?

A. I never paid much attention to the others.

Mr. Bulkley: That is all.

Re-direct Examination

By Mr. Cavanagh:

R-D Q. 131. The P. Lorillard Company are large Turkish cigarette manufacturers, are they not?

A. Yes, sir.

R-D Q. 132. And those are Turkish brands you have mentioned? 2383

A. Turkish brands; yes, sir.

Mr. Cavanagh: That is all.

Mr. Bulkley: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

J. S. WEINER, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows: 2384

Direct Examination

By Mr. Preston:

Q. 1. Will you please state your name, age, residence and occupation?

A. J. S. Weiner; age, thirty-two; residence, 2702 North Sacramento Avenue, Chicago; occupation, manager of the cigarette department of Rothschild & Company, Chicago, Illinois.

Q. 2. Mr. Weiner, will you state whether or not Rothschild's Department Store Company is one of the largest department stores in the City of Chicago? 2385

A. Well, it is one of the largest. While it is not the largest, it is one of the largest stores on State Street here.

Q. 3. How long have you been manager of the same department of Rothschilds?

A. Since June, 1918.

Q. 4. In the tobacco department do you handle Beech-Nut Scrap tobacco?

A. Yes, we do.

2386 Q. 5. Do you know what company makes Beech-Nut Serap tobacco?

A. As far as I know of my own knowledge, P. Lorillard Company always have made it. I believe their name appears on the tobacco.

Q. 6. Mr. Weiner, do you handle Beech-Nut cigarettes?

A. We do.

Q. 7. Do you know what company makes Beech-Nut cigarettes?

A. Same company as Beech-Nut tobacco, P. Lorillard Company.

2387 Q. 8. How long have you known of the Lorillard Company, Mr. Weiner?

A. How long have I known the company?

Q. 9. Known of the Lorillard Company?

A. I have known it to be one of the largest tobacco companies since I have been in the business, ever since I am in the tobacco business; that is since 1910; always done business with P. Lorillard Company.

Q. 10. Would you name some of the Lorillard brands of cigarettes you handle?

A. Murad, Egyptian Deities, Beech-Nut tobacco, Union Leader, Sensation, Climax, Spear Head, and several others too numerous to mention.

2388

Q. 11. Are they well known brands of tobacco and cigarettes?

A. Yes, sir. Most of them are well known and they sell very good.

Q. 12. Mr. Weiner, do you know of the Beech-Nut Packing Company?

A. I have heard of them, the Beech-Nut Products Company.

Q. 13. Do you know of Beech-Nut chewing gum?

A. Yes, sir; chew a lot of it myself.

Q. 14. Beech-Nut mints?

A. Yes, sir.

Q. 15. Did you ever hear any remarks, inquiries or comments among your customers or others to the effect or which led you to believe they thought the Beech-Nut Scrap tobacco or the Beech-Nut cigarette could be made by the Beech-Nut Packing Company?

2389

A. To my knowledge, I never heard any such comments.

Q. 16. Did you ever know of a tobacco manufacturer that manufactured food products?

A. Never heard of any; not as yet.

Q. 17. Do you regard chewing gum and confections and food products as in the same or in a different class of products from tobacco and cigarettes?

2390

A. Common sense would tell you it is two different individual products. Even in our store here we handle them in two different departments; we separate them.

Q. 18. Are any confections or chewing gum sold in the tobacco department here in this store?

A. No, sir; we confine ourselves simply to products made of tobacco.

Q. 19. Where are confections sold?

A. They are sold in department 16, the next aisle here, (indicating) the south end of the store.

Q. 20. Are Beech-Nut mints and Beech-Nut chewing gum on sale there?

2391

A. I believe we handle them; yes, sir.

Q. 21. Is that department located near the tobacco department?

A. It is a distance of about seven or eight aisles between the two departments.

Q. 22. Are they in the same room?

A. No, sir, the cigarette department is in the north room and the candy department in the south room.

Mr. Preston: I think that is all.

Cross Examination

By Mr. Johnson:

X-Q. 23. How long have you been with Rothschild's, Mr. Weiner?

A. Since June, 1918.

X-Q. 24. Have you been in charge of their tobacco department ever since you entered their employ?

A. Yes, sir.

X-Q. 25. How long have you been in the tobacco trade all together?

A. Since 1910.

X-Q. 26. With whom were you before you went to Rothschild?

A. Siegel-Cooper & Company.

X-Q. 27. Is that a department store?

A. Formerly Siegel-Cooper & Company; Leiter's Building now.

X-Q. 28. This one across the street?

A. Yes, right across the street from here.

X-Q. 29. How long were you with Siegel-Cooper's?

A. Well, since 1910 till 1918, till the time I came here. Do you want the exact dates?

X-Q. 30. No. Have you sold Lorillard tobaccos and cigarettes during all of that time?

A. Well, we always handled some of their brands, most of their leading brands anyhow.

X-Q. 31. Have you found in your experience in the tobacco trade that customers ask you for a brand of cigarettes or tobacco, or do they ask you for the cigarettes by the name of the maker?

A. They ask for the cigarette by the name of the brand of the cigarettes.

X-Q. 32. Cigarettes sell by the brand?

A. By the brand; by the name.

X-Q. 33. Did you ever have any customer in your experience ask you for Lorillard Murad cigarettes? 239

A. I do not recollect.

X-Q. 34. Or American Tobacco Company's Lucky Strike cigarettes?

A. Well, they occasionally specify the company.

X-Q. 35. Do you ever remember anyone asking you for American Tobacco Company's Lucky Strikes?

A. No, I do not remember.

X-Q. 36. Do you ever remember a customer asking you for Reynolds' Camel cigarettes?

A. No, sir, not directly.

X-Q. 37. Where is your tobacco department located in Rothschild's department store? 239

A. It is aisle 5, State Street side, right across there (indicating).

X-Q. 38. Is that on the main floor?

A. Main floor; yes, sir.

X-Q. 39. Is that somewhere near the center of the State Street side of the store?

A. Just a little off of the center, north.

X-Q. 40. Just a little north of the center?

A. Just north of the center. You see, there is a center door over there. Our department begins right there, just a little distance in between. 239

X-Q. 41. What floor space, approximately, do you occupy?

A. I do not know; I never measured it.

X-Q. 42. Just roughly?

A. Roughly speaking, we will say—

X-Q. 43. How long is it?

A. Oh, about fifty-four feet.

X-Q. 44. And about what depth have you?

A. About three or three and a half; something like that, I am very poor on measuring distance.

X-Q. 45. Do you have a pretty big trade there?

398 A. Yes, we do a pretty nice business.

X-Q. 46. How long have you sold Beech-Nut cigarettes?

A. Approximately two years or so.

X-Q. 47. Do you remember when you first put them in stock?

A. I can't remember. I can look it up for you. I imagine it was sometime in the fall of 1921.

X-Q. 48. When did you first handle Beech-Nut Scrap tobacco?

A. We always handled it here, since 1918.

399 X-Q. 49. When you first saw a package of Beech-Nut cigarettes, whose product did you think they were?

A. Well, the name was right on the package, P. Lorillard Company.

X-Q. 50. When you first saw a package, whose product did you think they were?

A. The name was right on the package, P. Lorillard Company. That is the reason I thought it was P. Lorillard's. I don't believe I knew of the Beech-Nut Product Company at that time.

X-Q. 51. You have always known of the P. Lorillard Company and you have always known the Beech-Nut cigarettes were one of their products, have you?

2400 A. Always was in close touch with their products, naturally, doing business with them, I would.

X-Q. 52. Have you heard of any inquiries, comments, remarks or any discussion as to who made the Beech-Nut cigarettes, or as to whether the same company made the Beech-Nut cigarettes as makes the chewing gum?

A. As far back as I can remember, I never heard any such comments.

X-Q. 53. You are pretty busy in your department, are you not?

A. Yes, sir.

X-Q. 54. Wait on a great many people?

2401

A. Yes, I do; most of the time.

X-Q. 55. Can you estimate how many a day?

A. About six hundred, on an average.

X-Q. 56. How many are there, how many clerks in your department?

A. Six.

X-Q. 57. How many are on duty at one time?

A. Outside of lunch hours, they are all on the job.

X-Q. 58. Do you wait on the counter yourself?

A. Yes, sir.

X-Q. 59. Do you have much time to talk to customers?

A. No, we don't waste much time talking to them unless they ask us any questions about the article they want to buy. 2402

X-Q. 60. Do customers frequently ask you who makes a certain cigarette or tobacco?

A. No, very seldom. They are most interested about the price.

X-Q. 61. Have you made any effort to remember any inquiries, remarks or comments as to who makes the Beech-Nut cigarettes, or as to whether they are made by the same company that makes the Beech-Nut gum?

A. No, sir.

X-Q. 62. Have you made any particular effort to remember any such incidents? 2403

A. I never have.

X-Q. 63. Did you have any reason to?

A. No, I don't believe I ever heard any comments.

X-Q. 64. Did anyone ever ask you to remember or make note of such inquiries or comments?

A. No, sir.

X-Q. 65. You never tried to remember them, did you?

A. Had no occasion to. I never did.

X-Q. 66. When you say that you never heard any

2404 such inquiries, remarks or comments, what you mean is you don't remember any?

A. I do not remember any because it would not be an ordinary question for a customer to ask anyone behind the counter.

X-Q. 67. Do you do the buying in your department, Mr. Weiner?

A. Yes, sir.

X-Q. 68. You buy through jobbers?

A. We do some; yes, sir.

X-Q. 69. Where do you buy your stock as a rule?

2405 A. We try to buy most of our merchandise direct where we possibly can. Some of the staple merchandise we pick up from the jobbers, such as P. Lorillard's goods, we buy those through the jobbers.

X-Q. 70. When you buy from jobbers, does the jobber usually give you an order slip or receipt?

A. Well, not the jobbers. We usually order through the telephone, but occasionally a company representative comes in here, we call that missionary work. If we buy an order through them direct, they give us a copy of the order and then they ship the goods through the jobbers.

2406 X-Q. 71. Does such order sheet have the name of the jobber at the top?

A. Has the name of the company and then the name of the jobber. The name of the jobber will be on top and the name of the company on the bottom as a rule.

Re-direct Examination.

By Mr. Preston:

R-D. Q. 72. Mr. Weiner, will you state whether or not, if you had heard any considerable number of remarks, inquiries or comments which indicated to you

that your customers or others thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes could be put out by the Beech-Nut Packing Company, you would have remembered them? 2407

A. I believe I would; yes sir.

R-D Q. 73. Do you remember, Mr. Weiner, from whom you first bought Beech-Nut cigarettes, what salesman, that is?

A. Sure. Mr. Brown. He is the P. Lorillard representative for the City of Chicago and usually calls on us.

R-D Q. 74. Do you remember whether or not he gave you a duplicate copy of your order?

A. He always does. Undoubtedly he did, but we don't keep them away back in 1921. 2408

R-D Q. 75. Do you happen to remember whether P. Lorillard's name is written on the top of those duplicate order blanks that are left with you?

A. I really couldn't say for sure. I know their name appears on the blank there.

R-D Q. 76. You know it appears on the blank somewhere?

A. Yes, sir; I just don't happen to remember what part of it.

Re-cross Examination

2409

By Mr. Johnson:

R-X Q. 75. How have the Beech-Nut cigarettes sold in your department?

A. They are a fair seller; nothing to brag about, though.

R-X Q. 76. At what period in the last two years did you sell the most of them?

A. Well, we sold most when they first came out, naturally, being a new brand, people were anxious to try them and see what they were.

2410 R-X Q. 77. Did you find many of your customers would smoke them the second time?

A. Yes, quite a few would come back for more.

R-X Q. 78. But you didn't sell many after you stopped pushing them; is that right?

A. We don't feature an item for a very long time; just give it a start and let it take its natural course.

R-X Q. 79. Do you sell many of them now?

A. Sell a few; yes; not as much as when they first came out.

R-X Q. 80. About how many a week do you sell now?

2411 A. I should say about a thousand a week, approximately.

R-X Q. 81. About how many did you sell a week when they were selling best?

A. Be nothing for us to sell five thousand.

Mr. Johnson: That is all.

Mr. Preston: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

2412 DAVID KOSSACK, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Preston:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is David Kossack; age, thirty-two; residence, 3255 West Polk Street, Chicago, Illinois; occupation, cigar dealer.

Q. 2. Mr. Kossack, do you know of the P. Lorillard Company? 2413

A. I surely do. I handle their merchandise.

Q. 3. What sort of products does the Lorillard Company make?

A. Well, they make Beech-Nut—

Q. 4. I mean what sort of products.

A. Tobaccos.

Q. 5. Will you name some of the Lorillard products that you handle?

A. Handle Beech-Nut tobaccos, Union Leader, Climax, Beech-Nut Scrap, and handle some of their cigars, of course, Royal Bengal, and so on. 2414

Q. 6. Do you handle Murad cigarettes?

A. Yes, sir.

Q. 7. Do you handle any other Turkish cigarettes made by Lorillard Company?

A. I really can't place all their brands. You can't remember all their brands, you see. Murads, London Life, that is their brands.

Q. 8. How long have you handled Beech-Nut Scrap tobacco, Mr. Kossack?

A. Since they have been on the market. I don't really remember how long it is.

Q. 9. Approximately. Could you give the approximate time? 2415

A. Been handling it now for the last seven years that I remember.

Q. 10. Have you always known what company makes Beech-Nut tobacco?

A. Yes, sir.

Q. 11. What company does make it?

A. Lorillard.

Q. 12. Is it a good seller?

A. Yes, it is.

Q. 13. Have you any better selling scrap tobacco?

A. No, sir.

- 2416 Q. 14. Do you handle Beech-Nut cigarettes?
 A. Yes, sir, I do.
- Q. 15. Do you know what company makes the Beech-Nut cigarette?
 A. Lorillard makes them.
- Q. 16. How long have you handled them?
 A. About two years since they come out, isn't it?
- Q. 17. Do you handle Beech-Nut chewing gum?
 A. Yes, sir.
- Q. 18. Do you know what company makes Beech-Nut chewing gum?
 A. No, I do not, but it is the Chicle Company, but I really don't know the name of it now.
- 2417 Q. 19. Were you ever under the impression that Beech-Nut Scrap tobacco and Beech-Nut cigarettes were made by the same company that makes Beech-Nut chewing gum?
 A. No, sir.
- Q. 20. Did you ever hear any remarks, inquiries or comments by customers or others which indicated to you that they thought Beech-Nut Scrap tobacco and Beech-Nut cigarettes were made by the same company that makes the Beech-Nut chewing gum?
- A. No, siree. I think anyone will understand that this is a tobacco company and not the candy.
- 2418 Q. 21. Do you regard chewing gum or confections as in the same or a different class of products from tobacco or cigarettes?
 A. Well, it is a different class of products. Anything applying to eatables cannot compare to chewing tobaccos.
- Q. 22. Did you ever know of a tobacco company that manufactured food products or confections?
 A. No, I did not.

Mr. Preston: That is all.

Cross Examination

241

By Mr. Johnson:

X-Q. 23. How long have you been in the tobacco business?

A. Sixteen years on the 17th.

X-Q. 24. All together?

A. All together.

X-Q. 25. Are you the proprietor of this store?

A. Yes, sir. Got two more.

X-Q. 26. I am referring to the store at 436 South Clark Street?

242

A. Yes, sir.

X-Q. 27. How long have you had this store?

A. Two years in May.

X-Q. 28. How long have you been in business for yourself?

A. Sixteen years.

X-Q. 29. Been your own boss all that time?

A. Yes, sir. Not continually. You know, during that time I sold out a store and went to work for three or four months, probably a year or six months, then went back into business. I wouldn't say I was my own boss.

243

X-Q. 30. About what size is this store at 436 South Clark Street?

A. You mean what size, the size of the length or what?

X-Q. 31. Yes, just roughly.

A. I should judge about ten feet front and about forty or forty-five feet deep. Maybe twelve in front.

X-Q. 32. Have you a counter down along the length of the south side, with cases containing tobaccos and smokers' articles back of the counter?

A. Sure. All counters are on the south side. There is nothing on the north side of the store.

2422 X-Q. 33. About how many customers a day do you have coming in here?

A. Really, this is a personal question, but if I must answer it I will answer it. This is not in the line of questions at all.

X-Q. 34. We are not trying to get any secrets.

A. I understand, but in business it is a personal question. We have between four and five hundred people.

X-Q. 35. Have you any other clerks here besides yourself?

A. Yes, sir.

2423 X-Q. 36. How many?

A. One; sometimes two.

X-Q. 37. How many do you have in here at one time as a rule?

A. As I said before, one, and sometimes two. This man that just walked out is an extra man. He is not here regularly, but once in a while he is.

X-Q. 38. Do you wait on the counter yourself?

A. Yes, sir.

X-Q. 39. Do you have much time, as a rule, to talk to customers?

A. Well, yes; to a certain extent.

2424 X-Q. 40. Do many of them ask who makes a cigarette or whatever it is they are buying?

A. No, sir, they do not.

X-Q. 41. Have you in your experience, since Beech-Nut Scrap tobacco came out and you have been handling it, heard any customers ask who made it?

A. No, sir. I wouldn't swear I never heard a man ask who, but very seldom.

X-Q. 42. And the same with regard to Beech-Nut cigarettes, have you heard—

A. No, sir.

X-Q. 43. —any customers ask who made them?

A. No, sir; they don't care who makes it.

X-Q. 44. Or have you heard any remarks, comments or discussion along that line as to who makes the Beech-Nut cigarettes or as to whether they are made by the same people that make the Beech-Nut gum? 2425

A. No, siree.

X-Q. 45. Have you made any effort to remember such incidents if they had happened, have you tried to remember them?

A. I did not make any effort, but a person would remember a question of that kind.

X-Q. 46. But you yourself have always known both the scrap tobacco and the Beech-Nut cigarettes were made by the Lorillard Company? 2426

A. Yes, sir.

X-Q. 47. Have you found in all these years' experience in the tobacco trade that people ask for cigarettes or tobacco by the name of the brand?

A. Only.

X-Q. 48. That is, they ask for Camel cigarettes?

A. Camels or Beech-Nut, or whatever cigarette brand, they ask for it by name.

X-Q. 49. Did you ever hear a customer ask for Lorillard's Beech-Nut cigarettes?

A. No, sir.

X-Q. 50. Or for Reynolds' Camels? 2427

A. No, sir, they never asked me that.

X-Q. 51. Or for the American Tobacco Company's Lucky Strikes?

A. No, siree.

X-Q. 52. You never heard anyone buying cigarettes or tobacco ask for it by the name of the maker, have you?

A. No, sir.

X-Q. 53. Have you handled Camel cigarettes?

A. Yes, sir.

2428 X-Q. 54. Have you handled many of them?

A. Many.

X-Q. 55. About how many thousands a week?

A. We sell about twelve or fifteen thousand a week.

X-Q. 56. Have you handled the packages in your own hands?

A. Some of them. Of course, when I am not here—

X-Q. 57. A good many of them?

A. A good many of them; yes, sir.

X-Q. 58. Can you tell me what is on the front side of the Camel cigarette package underneath the picture of the Camel?

2429 A. Just says "Cigarettes" underneath; that is all. Says "Camels" on top.

X-Q. 59. Have you handled Lucky Strike cigarettes?

A. Yes, sir.

X-Q. 60. Many of them?

A. Yes, sir; quite a few.

X-Q. 61. In your own hands?

A. Some of them, as I said before, handled a good many of them.

X-Q. 62. Can you tell me what is on the front side of the Lucky Strike cigarette package underneath the red panel?

2430 A. It is written in gold lettering "Cigarettes;" that is all I remember of.

X-Q. 63. Have you found the Beech-Nut cigarettes to be good sellers?

A. No, not much; it has not sold with me, anyway.

X-Q. 64. How did they sell when they first put them into your store?

A. Never sell much; couldn't class them as a good seller, by any means.

X-Q. 65. About how many a week did you sell when they were selling best?

A. Well, really, to be truthful, I can't remember. I 2431
didn't sell many; that is one thing.

X-Q. 66. Are you selling them now?

A. Yes, sir.

X-Q. 67. About how many a week?

A. Oh, we sell probably a thousand a month.

Mr. Johnson: That is all.

Re-direct Examination:

By Mr. Preston:

R-D. Q. 68. Mr. Kossack, will you state whether or 2432
not, if you had heard any considerable number of re-
marks or inquiries in regard to who made the Beech-
Nut Scrap tobacco or Beech-Nut cigarettes, you would
have remembered it?

A. Sure. As I said before, I would have remembered
such remarks. Now, to explain how, plainly the cus-
tomer personally does not care who makes it or what it
is. They go by name only.

R-D. Q. 69. In your store here, Mr. Kossack, do you
handle any dry goods?

A. Well, I call it gents' furnishings, if that is what
you are referring to. 2433

R-D. Q. 70. Gents' furnishings?

A. Gloves, socks; that is all the gents' furnishings I
have.

R-D. Q. 71. Do you handle playing cards?

A. Yes, sir.

R-D. Q. 72. Do you sell knives?

A. Yes, sir.

R-D. Q. 73. Do you sell pencils?

A. Yes, sir.

R-D. Q. 74. Are you the owner of any stores besides
this one here?

1
6
8
7

2434 A. Yes, sir; two of them.

R-D. Q. 75. Are they situated in the down town section of Chicago?

A. One of them.

R-D. Q. 76. And where is the other one?

A. 601 South Dearborn.

Mr. Preston: That is all.

Mr. Johnson: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

2435 WHEREUPON an adjournment was taken until Friday, February 9, 1923, at 9:30 a. m.

Chicago, February 9, 1923,
9:30 o'clock a. m.

Parties met pursuant to adjournment.

PRESENT: Counsel as before.

WILLIAM H. GETZELMAN, called as a witness on behalf of the defendant, P. Lorillard Company, having
2436 been first duly sworn, testified as follows:

Direct Examination.

By Mr. Preston:

Q. 1. Will you please state your name, age, residence and occupation?

A. William H. Getzelman; age, thirty-five; residence, 6204 Langley Avenue, Chicago; general manager for Albert Breitung.

Q. 2. What business is Albert Breitung in?

A. Retail cigar business.

2437

Q. 3. How many stores does he control?

A. We have eleven at present.

Q. 4. What part of the City of Chicago are they located in?

A. In the Loop.

Q. 5. And how long have you been manager of this chain of stores?

A. Four and a half years.

Q. 6. Mr. Getzelman, could you give approximately the average of the number of customers you have in one of your stores a day?

A. In one store?

2438

Q. 7. How many customers do you have in all eleven of your stores, do you know that, approximately?

A. No, I do not. I could get that for you in a minute.

Q. 8. Could you make anywhere near an accurate estimate?

A. Well, you see, some of the stands run seven or eight hundred customers, and some of the stores run about twelve hundred. Of course, I could get the figures from the office.

Q. 9. I do not think that is necessary. Mr. Getzelman, do you handle Beech-Nut Scrap tobacco in your stores?

2439

A. Well, we handle it in—like where there is transient trade, that is, the corner stores, like you take the stands, they generally carry it. There is no demand for it.

Q. 10. In the stores where you keep Beech-Nut Scrap tobacco, is it a very good seller?

A. Very good seller.

Q. 11. Do you know of the Lorillard Company?

A. Oh, sure.

Q. 12. What business are they in?

2440 A. Manufacturers of cigarettes, scrap tobacco and plug tobacco, cigars.

Q. 13. Did you ever know the Lorillard Company to put out anything except tobacco products?

A. No.

Q. 14. Do you handle a good many Lorillard brands?

A. Why, we handle them all.

Q. 15. Would you name some of the more prominent Lorillard brands you handle?

A. Well, Murad cigarettes, Egyptian Deities, that is, you know, cigarettes, we sell a great number of them; we sell a lot of Climax tobacco, and Muriel cigars.

2441 Q. 16. Do you know what company manufactures Beech-Nut Scrap tobacco?

A. Oh, Lorillard.

Q. 17. Have you known that ever since you have been handling it?

A. Yes.

Q. 18. Do you handle Beech-Nut cigarettes?

A. Yes.

Q. 19. About how many have you handled of them?

A. Well, we were the first people in Chicago to put Beech-Nut cigarettes on the market. Now, I think that is a couple of years; I wouldn't say for sure.

2442 Q. 20. When Beech-Nut cigarettes were first put on sale on this market, were they prominently displayed in your stores?

Mr. Johnson: Objection by Mr. Johnson to the leading questions.

A. Yes.

Q. 21. Will you state, in your own words, your method of display, how you displayed those cigarettes when you first put them on the market?

A. Well, we made exclusive windows. By that I

mean it was a solid window of Beech-Nut cigarettes. 2443

The reason for that was I figured they would sell better, I mean the sale would be larger than if we only had one or two cartons in the window.

Q. 22. Do you know what company makes Beech-Nut cigarettes?

A. Lorillard.

Q. 23. You have always known that?

A. Yes.

Q. 24. Do you handle Beech-Nut chewing gum?

A. Yes.

Q. 25. Do you know what company manufactures Beech-Nut chewing gum? 2444

A. Yes.

Q. 26. What company manufactures it?

A. I guess it is the Beech-Nut Packing Company, I believe the Cudahy Beech-Nut Packing Company. I know we carry Beech-Nut chewing gum; I guess it is the Beech-Nut Packing Company.

Q. 27. Mr. Getzelman, have you ever heard any remarks, inquiries or comments among your customers or others to the effect or which led you to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes to be a product of the company that manufactured Beech-Nut gum? 2445

A. No.

Q. 28. Did you ever know of a food products or candy company that manufactured any tobacco products?

A. No.

Q. 29. Do you regard gum and tobacco products as in the same or in separate classes?

A. Separate.

Q. 30. Do you think that Beech-Nut Scrap tobacco packages or the Beech-Nut cigarette package look like the Beech-Nut gum package?

A. No.

2446 Q. 31. Do you think it would be possible to mistake either the cigarette package or the scrap tobacco package for a gum package?

A. No.

Mr. Preston: That is all.

Cross Examination

By Mr. Johnson:

X-Q. 32. Mr. Getzelman, how long have you been in the tobacco business all together?

2447 A. I have been with Mr. Breitung sixteen years.

X-Q. 33. Was that when you first went to work?

A. Sixteen years ago; yes, sir.

X-Q. 34. What positions have you held with him during that time?

A. Why, I started working in the shipping room, and then I was a clerk behind the counter here for a while, in the Monadnock here.

X-Q. 35. About how long?

2448 A. Well, you would call it a clerk or manager of a store for about twelve years. Some take the title of manager of the store and is nothing but a clerk. I had charge of the Sherman House store for eight years and I had three and four men working with me at the Sherman House store. That is a prominent corner and supposed to be one of our best stores, and my position was in breaking in the men for the other stores, you see. If they would hire a new man, they would send him down to me and I would handle him for a while. If he proved all right, they would take him away and use him in another store, if he was needed.

X-Q. 36. What store do you make your headquarters now?

A. Right here.

X-Q. 37. What is that address?

2449

A. 300 South Dearborn.

X-Q. 38. Is that in the Monadnock Building?

A. Yes, sir.

X-Q. 39. How long have you been in this store?

A. Well, I have been general manager for about four and a half years.

X-Q. 40. And during the time when you were clerk or store manager how long were you in this store?

A. Well, let me see. I was at the Sherman House about eight years and about four here.

X-Q. 41. Before you became general manager?

A. No. I have been with Breitung sixteen years. I started in this building. This is the headquarters, you see. I started at the other end of the building and I worked when this store was down a little further; we did not have the corner, you see. I worked in this building about four years and then went to the Sherman House. I was at the Sherman House about eight years and they made me general manager and I came back here. This is the headquarters. I was made general manager.

2450

X-Q. 42. Is this on a corner?

A. Yes, sir.

X-Q. 43. What corner?

2451

A. Jackson and Dearborn; on the southwest corner.

X-Q. 44. Are the other Albert Breitung stores in the principal office buildings of Chicago?

A. Yes, sir.

X-Q. 45. The down town office buildings?

A. Yes, sir.

X-Q. 46. About how many customers do you have in this store a day?

A. In this store?

X-Q. 47. Yes.

A. This store will run about eight hundred. You see, the hours here are very—well, you know how as

52. office building is, they come in at nine and they are out of the building at five. That is why this store don't run more. A store like this should be open evenings, holidays and Sundays. Take a store like the Sherman, that is open until twelve o'clock at night. That store runs a good many more customers.

X-Q. 48. Have you been general manager of Breitung's all during the time since the Beech-Nut cigarettes first came out?

A. Well, I believe Beech-Nut cigarettes come out about two years ago, and I have been general manager four and a half years.

53. X-Q. 49. Have you waited on the counter much during that time?

A. I do not wait on the counter much; I do once in a while, not very much.

X-Q. 50. To relieve—

A. No. Once in a while I do it to see what the customers have to say. Mr. Breitung and I do not agree on that. He says that is no place for me, but I do it sometimes to see what is really going on.

X-Q. 51. But you have not been able to do it very much during the last two years?

A. No, I do not do it much.

54. X-Q. 52. So you do not hear very much of what customers are saying?

A. You don't think so? You want to travel around with me to the eleven stores. That is why I am manager. I have no assistants. I make all the stores.

X-Q. 53. Do you have much occasion to hear what the customers are saying behind your back?

A. That is what I try to do. I try to see if they are pleased. I try to make everything as agreeable as I can for the customer.

X-Q. 54. When did you first start to handle Beech-Nut cigarettes?

A. I believe about two years ago; I wouldn't say for sure. 2455

X-Q. 55. You think you were the first one in Chicago?

A. I know we were the first one. Whenever there is anything new on the market, see, I like to be the first one to handle it, if I think much of it, because I feel it is a good ad. See?

X-Q. 56. Can you tell me when that was that you first put them in?

A. I say about two years ago.

X-Q. 57. Can you locate it any more accurately than that? 2456

A. I can have the office look it up.

X-Q. 58. I mean, can you say what month or what year it was?

A. I could not say for sure.

X-Q. 59. You cannot remember any closer than that it was about two years ago?

A. I know this much, that it was not in November or December or January. I know that because I would not give them an exclusive window on Beech-Nut cigarettes in those months, because our windows are too valuable. See? So probably—this is just guess work—I started in March or April or June; I couldn't say. See? But I know it was not November or December or January. I know it was not in those months. 2457

X-Q. 60. Have you heard any inquiries, remarks or comments as to who makes the Beech-Nut cigarettes or as to whether the same people make them that make the Beech-Nut gum?

A. No.

X-Q. 61. You have not heard any at all?

A. No.

X-Q. 62. Have you made any effort to remember any such inquiries or remarks, if any?

2458 A. Well, what we try to do,—See? We do not believe in misrepresenting an article. See?

X-Q. 63. Just answer that question.

Mr. Johnson: Read the question, please.

(The question was read)

X-Q. 64. Have you made any effort to remember such things?

A. I have not made any effort.

X-Q. 65. Did anyone ask you to make a note of them?

A. No.

2459

X-Q. 66. Or try to remember them?

A. No.

X-Q. 67. Do you handle Beech-Nut chewing gum?

A. Yes, sir, and we sell a lot of it.

X-Q. 68. Do you handle any Beech-Nut mints?

A. Yes, sir.

X-Q. 69. Or hard candies?

A. Yes, we buy everything direct in the way of mints, chewing gum, their caramels, and they are displayed on the counter.

X-Q. 70. Have you ever made an exclusive window display of Beech-Nut gums and hard candies?

2460

A. No, we do not display candies. They are in the show case. They are not in the show windows.

X-Q. 71. Whereabouts in your store are the Beech-Nut gum and hard candies displayed?

A. This store don't carry candies, the lease won't allow us, but we have a gum case here on the counter. See? At the entrance counter.

X-Q. 72. Where is that with reference to the cigarettes?

A. Well, we have cigarettes—Beech-Nut cigarettes are not in the show cases; Beech-Nut cigarettes are in the drawer on top of the counter. We display the higher priced cigarettes, but we do not display, you know, the

cheap cigarettes like Camels, Lucky Strikes, and so forth; we do not display those in the show cases. 2461

X-Q. 73. You mean like the Beech-Nut cigarettes in the last classification?

A. I would. The cheap cigarettes, Camels, Lucky Strikes, Beech-Nut; that is what I call the cheap cigarettes.

X-Q. 74. Where is the Beech-Nut chewing gum displayed in your store with reference to your cigarettes?

A. Oh, that is separate. We do not have the cigarettes and the chewing gum together, you know.

X-Q. 75. About how near are they?

A. Well, the Beech-Nut cigarettes are in a drawer. We may have a Beech-Nut carton on the top of the counter, see, but it would not be right in with the gum. 2462

X-Q. 76. Where is the gum?

A. The gum is displayed in a show case.

X-Q. 77. At the back of the counters?

A. Yes. You take some of our stands, why, the Beech-Nut mints, you take like the Harris Trust Building, for instance, see? I mention the Harris Trust because we sell probably seventy or eighty dollars' worth of candy and gum a day. We have one end of the counter for the gum and the candy, the Beech-Nut mints, Hershey bars, and so forth; big sellers; that is not in the case, because people come in and help themselves. We wouldn't have Beech-Nut cigarettes or Lucky Strikes or some other cigarettes mixed up with the candy and gum. That is off on the other end of the counter. 2463

X-Q. 78. Did you, in making these Beech-Nut window displays, ever place in with the Beech-Nut cigarettes any of the Beech-Nut gum or mint packages or advertising matter?

A. No gum went in with the Beech-Nut cigarettes.

X-Q. 79. In these window displays I am speaking of.

A. No; no, sir.

2464 X-Q. 80. Have you handled Lorillard tobacco products for a good many years?

A. Yes, sir.

X-Q. 81. Ever since you began in the business?

A. Well, I guess, as far as I know, since I been in the business, why, we have sold Lorillard. See?

X-Q. 82. Are you big buyers of the Lorillard Company?

2465 A. Well, I don't know whether you would call it big buyers. We are on the direct list with all the tobacco houses. See? And for eleven or twelve Stores, I guess we are big buyers. I don't know whether you would call us big buyers, but we must be pretty large to be on the direct list. They don't put a man on with one store, or two stores, you know.

X-Q. 83. So you have been familiar with the Lorillard products for a long time, haven't you?

A. Yes.

X-Q. 84. You have been in direct relationship with the Lorillard Company for quite a long while, from what you say?

A. What do you mean?

X-Q. 85. Is that correct. On this direct list you are buying—

2466 A. We are direct buyers, the same as we are with Beech-Nut chewing gum. We buy direct everything we have; everything direct, you see.

X-Q. 86. When did you first start to handle Beech-Nut Serap tobacco?

A. Well, that is hard to say. I suppose we have handled it as long as it has been on the market; I do not know for sure. I knew we have had Beech-Nut Serap for a long time.

X-Q. 87. Did you know whose product it was when you first saw the package?

A. Yes, sir, because those salesmen, you know, make it a point to say who makes an article. 2467

X-Q. 88. Whose product did you think the Beech-Nut cigarettes were when you first saw the package?

A. Whom did I think?

X-Q. 89. Whose product did you think the Beech-Nut cigarettes were?

A. I naturally would think it was the Lorillard Company when the Lorillard man came in to see me.

X-Q. 90. Do you know the Lorillard men personally that come in?

A. I know some of them. They get around here just the same way as the other salesmen, you know, that we buy from. 2468

X-Q. 91. You are buying from them constantly and the same men are here frequently?

A. You see, we make up our order about twice a month and it is mailed in. We do not wait for the salesman to come in; it is mailed direct. You see? Because the only time they come around here is when they have something new, you know. They want to show it, and that is the only time the salesmen come here to see me; if there is something new they want to put on the market, they come to see me. Now, the order is made up about twice a month and is mailed direct. We do not wait for the salesman to come in to give him our order. He don't come in to take the order. 2469

X-Q. 92. Do you know Mr. Wade H. Brown, the district Lorillard man in Chicago, Mr. Getzelman?

A. Yes. This gentleman that was here this morning, you mean?

X-Q. 93. Yes.

A. Yes, I know him.

X-Q. 94. How long have you known him?

A. Well, probably—this is just guess work—about two years; maybe it is three; I couldn't say.

2470 X-Q. 95. How have the Beech-Nut cigarettes sold since they first came out?

A. Well, when we first put them on they went over very good; very, very good, but of late they are not selling.

X-Q. 96. About how many of them did you sell when they were going good?

A. I guess we started out selling about fifty thousand a month. For a new cigarette I call that very good.

X-Q. 97. About how many are you selling now?

A. Well, probably, maybe a thousand.

2471 X-Q. 98. Is that in all your eleven stores you are referring to?

A. Yes.

X-Q. 99. Have you heard any remarks or complaints as to the quality of the Beech-Nut cigarettes?

A. Well, yes, I have; like some say they do not like them, you know; that is about what I have heard, you know. I have heard them say, "I don't like that Beech-Nut cigarette."

X-Q. 100. Have you found that the same customer, as a rule, would come back and buy them the second time?

2472 A. Oh, when they first come out, yes. I say when they were first put on the market, you know, why, we had regular customers. Must have had, you know, to sell fifty thousand.

X-Q. 101. In your experience in the tobacco business, Mr. Getzelman, have you found that customers ask for cigarettes and tobaccos by the name of the brand? Do they ask for Camels and Lucky Strikes and Union Leader, Climax, the names of the brands, such as that?

A. Yes. Yes, they come in and say, Camel, Lucky Strike. That is generally the way they ask for them.

X-Q. 102. Would you say they sell by brands?

A. Well, I guess that is what you would say, they

sell by brands. If a man wants a package of Camels, **2473**
he won't say Reynolds' Camels; he would say Camels.

X-Q. 103. That is what I mean. Did you ever, in your experience, extending through sixteen years, hear a man, a customer, ask for Reynolds' Camels?

A. No.

X-Q. 104. Or American Tobacco Company's Lucky Strikes?

A. No. But now, here is a case, here is the La Venda cigar—I don't know whether this is to be taken down.

X-Q. 105. Just answer the question.

Mr. Preston: Go ahead and finish your answer, **2474**
Mr. Getzelman.

A. I was going to say, you see, there is the La Venda and the La Venga. We have a little trouble on that. The La Venda is our cigar and the La Venga is somebody else's.

X-Q. 106. Those are cigars, are they?

A. Yes.

X-Q. 107. Did you ever in your experience hear a customer ask for Lorillard's Moguls?

A. No

X-Q. 108. Or Lorillard's Murads? **2475**

A. No.

X-Q. 109. Or Lorillard's Beech-Nut cigarettes?

A. I have heard them ask for Beech-Nut cigarettes, but I won't say Lorillard Beech-Nut cigarettes. But I will say this much that in introducing a new cigarette you have got, the people are so that they want to know who manufactures it. See? Because you can't come out with a cigarette that is made over here on Twelfth Street and make a success of it, because the public won't fall for it. There has to be a big company behind it to put a cigarette over nowadays.

2476 X-Q. 110. Have you changed your mind as to the answer to the question as to whether you have heard inquiries as to who makes the Beech-Nut cigarettes?

A. Let me get that.

X-Q. 111. As I understood you before, you said you had never heard any one ask who makes the Beech-Nut cigarettes?

A. I have never heard anybody ask.

X-Q. 112. Yes. And especially as to whether they are made by the same people as the Beech-Nut gum?

A. Well, sure, I have heard people say, "Who makes the Beech-Nut cigarettes?"

2477 X-Q. 113. Did you hear any discussion of it at any time?

A. Of course, I wouldn't have very many inquiries as to who makes it unless we are trying to sell a package. Naturally, the name is right there on the package, Lorillard's Beech-Nut, you know.

Mr. Johnson: That is all.

Re-direct Examination.

By Mr. Preston:

2478 R-D Q. 114. Mr. Getzelman, did you ever hear any of your customers say that, in their opinion, the tobacco in Beech-Nut cigarettes was not good tobacco?

A. Is not what?

R-D Q. 115. Did you ever hear any of your customers say that the tobacco in Beech-Nut cigarettes was not good tobacco?

A. No. They generally say they don't like the cigarettes. That is what they say; they don't say the tobacco is not good.

R-D Q. 116. You regard it merely as a matter of per-

sonal taste as to whether a man likes a cigarette or not? 2479

A. Yes.

R-D Q. 117. Can you state whether or not, during the time that you have worked for Mr. Breitung, you have been engaged in training new salesmen?

A. Yes, sir.

R-D Q. 118. What was the nature of the instructions which you tried to impress upon your salesmen when you were breaking them in?

A. Well, that is a long story. I always want to impress the salesman not to lie to the customers; always tell the truth; not to misrepresent an article. 2480

R-D Q. 119. I understood you to say on your cross-examination that you always made an attempt to be the first to put a new article on the market if you thought it was going to be a good seller?

A. Yes.

R-D Q. 120. Will you state why it was that you made an attempt and did put Beech-Nut cigarettes on this market before any of the other stores had them?

A. Well, I suppose, if I remember correct, the Beech-Nut cigarette come out at fifteen cents, and at that time most cigarettes of that style were selling for twenty cents, and I thought there was a good opportunity to have a big business on a fifteen-cent cigarette. 2481

R-D Q. 121. At that time were you handling Beech-Nut chewing gum?

A. Yes, sir.

R-D Q. 122. Was it a good seller with you at that time?

A. Yes, sir.

R-D Q. 123. Did that fact induce you to make an attempt to get Beech-Nut cigarettes before the stores in this neighborhood had them? Do you understand the question?

2482 A. No.

R-D Q. 124. Did the fact—

Mr. Johnson: Objection by Mr. Johnson to this question as grossly leading.

Mr. Preston: Will you read the question?

(The record was read)

A. No.

Mr. Johnson: Add to my objection, please. Counsel for Beech-Nut Packing Company objects to counsel for P. Lorillard Company telling the witness in his question just exactly what he wants in the answer.

2483 R-D Q. 125. Mr. Getzelman, will you state whether or not, if you had heard a considerable number of remarks or inquiries or comments among your customers which indicated that they thought Beech-Nut cigarettes were made by the same company that makes Beech-Nut gum, you would have remembered them?

2484 A. Well, I would have remembered them. Our class of trade is people that we come in contact with, you know, every day. It is not so much transient trade, and it would get to me if there was a lot of complaining. Of course, you take like the Sherman House store and Stock Exchange and Borland, they have a lot of transient trade, but the other places, you see, it is a regular trade every day, and when they come they say, "How do you do, Mr. Johnson, How do you do, Mr. Brown." We know them. But the transient stores, why, I would get to it. See?

Mr. Preston: That is all.

Re-cross Examination

2485

By Mr. Johnson:

R-X Q. 126. Mr. Getzelman, can you tell me what office buildings your tobacco stands are in?

A. For instance, the Monadnock, we have a store and a stand; is that what you want?

R-X Q. 127. I just want the names of the buildings, really.

A. Monadnock Building, a corner store and an inside stand. Old Colony Building, store. Marshall Field Building, men's building, stand. Hotel Sherman, store. Stock Exchange Building, store. Borland Building store. Harris Trust Bank Building, store. Standard Trust Building, store. Corn Exchange Bank Building, stand. The Rookery, I don't know if you call that a stand or a store. It is a prominent building and we sell loads of cigarettes in there on account of so many brokers; it is a big stand.

2486

R-X Q. 128. Are these among the busiest tobacco stores and stands in the City of Chicago?

A. Yes, sir.

R-X Q. 129. Do you handle Lorillard products in all of them?

A. Yes, sir.

2487

R-X Q. 130. And have you handled Lorillard products in all of them for some years?

A. Yes, sir.

Mr. Johnson: That is all.

Mr. Preston: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

2488

B. GANEK, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Preston:

Q. 1. Will you please state your name, age, residence and occupation?

2489 A. B. Ganek; age, twenty-nine; residence, 3821 West Congress Street, Chicago; occupation, retail cigar merchant.

Q. 2. Mr. Ganek, are you the manager of a number of stores in Chicago?

A. Yes.

Q. 3. How many are you the manager of?

A. At the present time, six.

Q. 4. What part of Chicago are they located in?

A. Two of them in the Loop and four on the South Side.

Q. 5. How long have you been manager of these six stores, Mr. Ganek?

A. Four years.

2490 Q. 6. Do you spend much of your time in the stores yourself?

A. Oh, yes.

Q. 7. Do you handle Beech-Nut Scrap tobacco?

A. Yes, sir.

Q. 8. How long have you handled that tobacco?

A. Well, since the last four years, for this concern.

Q. 9. Do you know what company makes Beech-Nut tobacco?

A. Yes, sir.

Q. 10. What company is it?

A. P. Lorillard.

Q. 11. Do you handle any other products made by the Lorillard Company? 249

A. Yes, sir.

Q. 12. Will you name a few of the Lorillard products that you handle?

A. Union Leader, Climax, Sensation, Open Book.

Q. 13. Do you handle any Turkish cigarettes made by the Lorillard Company?

A. Yes, sir. Murad, Helmar, Egyptian Deities, Luxuries.

Q. 14. Do you handle Beech-Nut cigarettes, Mr. Ganek?

A. Yes, sir, Beech-Nut cigarettes.

2492

Q. 15. How long have you handled them?

A. Since they came out, the last two years, I guess.

Q. 16. Do you know what company makes them?

A. Yes, sir.

Q. 17. What company makes them?

A. P. Lorillard.

Q. 18. Do you handle Beech-Nut chewing gum?

A. Yes, sir.

Q. 19. Do you handle any Beech-Nut mints or candies?

A. We do.

Q. 20. Do you know what company manufactures Beech-Nut chewing gum and mints? 2493

A. Yes, sir.

Q. 21. What company?

A. Beech-Nut Packing Company.

Q. 22. Did you ever hear any remarks, inquiries or comments among your customers or others to the effect or which would lead you to believe they thought Beech-Nut Scrap tobacco or the Beech-Nut cigarettes to be the product of the Beech-Nut Packing Company?

A. No, sir.

Q. 23. Did you ever know of a food products company

2494 or a candy company or a gum company that manufactured any tobacco products?

A. No, not that I know of.

Q. 24. Do you regard gum and candies as in the same or a different class from tobacco or cigarettes?

A. It is a different class.

Q. 25. Did you ever see a package put up by the Beech-Nut Packing Company that looked either like Lorillard's Beech-Nut Scrap tobacco or Beech-Nut cigarettes?

A. No, sir, I never did.

2495

Cross Examination

By Mr. Johnson:

X-Q. 26. How long have you been in the tobacco business, Mr. Ganek?

A. For the last fifteen years.

X-Q. 27. What were you doing before you came into your present position?

A. I had a place of business on the South Side, corner of Twenty-second and Wentworth Avenue, 2201 Wentworth.

X-Q. 28. What did you do there?

2496

A. Same line of business, cigars and tobacco.

X-Q. 29. What store do you make your headquarters right now?

A. Right here.

X-Q. 30. What is the address?

A. 600 South State Street.

X-Q. 31. Do you wait on the counter here?

A. Yes, I do.

X-Q. 32. How long have you been at this address, 600 South State Street?

A. About two and a half years.

X-Q. 33. Ever since the Beech-Nut cigarettes came out? 2497

A. Well, I don't remember when they came out, but we had them when they first came out.

X-Q. 34. Can you say about what month and year it was when you first began to handle Beech-Nut cigarettes?

A. I couldn't exactly tell you; probably about a year ago or so.

X-Q. 35. About how many customers do you have in this store, 66 South State Street, a day?

A. Between ten and twelve hundred.

X-Q. 36. It is a very busy store, is it? 2498

A. It is a pretty busy store; yes, sir.

X-Q. 37. How many clerks do you have?

A. Four clerks.

X-Q. 38. Besides yourself?

A. No; three besides myself.

X-Q. 39. You have four here most of the time?

A. They are not here all the time, but I have different shifts.

X-Q. 40. How many at a time?

A. One or two at a time.

X-Q. 41. Is this a corner store? 2499

A. Yes, sir.

X-Q. 42. On what corner?

A. State and Harrison.

X-Q. 43. Do you have much time to talk to customers?

A. Oh, yes, quite a bit of time.

X-Q. 44. Do many of them ask you who makes these cigarettes or the article they are buying.

A. No; very seldom anybody asks that.

X-Q. 45. Did you make any effort to remember whether you heard any inquiries, comments or remarks as to who makes the Beech-Nut cigarettes?

A. No; never did.

- 2500 X-Q. 46. You never tried to remember?
A. That is, I never had any inquiries.
X-Q. 47. My question was: Did you ever try to remember any such inquiries, if you had them?
A. Well, I never had any, so I can't remember.
X-Q. 48. Did anybody ever ask you to remember or make a note of any such inquiries?
A. No, they never did.
X-Q. 49. Then you had no reason, did you, to try to remember any such?
A. No.
X-Q. 50. Did you ever hear any discussion as to who makes the Beech-Nut cigarettes?
2501 A. No, I never did.
X-Q. 51. Never at any time?
A. No.
X-Q. 52. When you first saw the package, who did you think put out the Beech-Nut cigarettes?
A. P. Lorillard.
X-Q. 53. Have you handled Lorillard products for a long time?
A. Oh, yes.
X-Q. 54. Handle many in quantity of them?
A. Quite a few.
2502 X-Q. 55. Do you know Mr. Brown, the district man for the P. Lorillard Company in Chicago?
A. Yes, sir.
X-Q. 56. How long have you known him?
A. I have known him for the last six or eight years.
X-Q. 57. How have the Beech-Nut cigarettes sold since you have been here?
A. Sir?
X-Q. 58. How have the Beech-Nut cigarettes sold since you put them in here?
A. Very bad.

X-Q. 59. Ever since the start?

250

A. Ever since the start; they did not take.

X-Q. 60. About how many a week did you sell when they were selling best?

A. Well, I couldn't tell you that; probably use about a thousand a week in all the stores.

X-Q. 61. In all six stores?

A. In all six stores.

X-Q. 62. About how many a week do you sell now?

A. I couldn't tell you; I don't know— About two hundred a week in all six stores.

X-Q. 63. Did you ever hear any complaints as to the quality of the Beech-Nut cigarettes?

250

A. No; never did.

X-Q. 64. Did you hear any remarks on the Beech-Nut cigarettes by those who had used them?

A. No; never did.

Re-direct Examination.

By Mr. Preston:

R-D. Q. 65. Mr. Ganek, you sell playing cards in your store here?

A. Yes, sir.

R-D. Q. 66. Do you sell pencils?

250

A. Yes, sir.

R-D. Q. 67. Do you sell razor blades?

A. Yes, sir.

R-D. Q. 68. Will you state whether or not, if you had heard any considerable number of remarks or inquiries among your customers or others which led you to believe that Beech-Nut cigarettes or Beech-Nut Scrap tobacco was made by the same concern that makes Beech-Nut chewing gum, you would have remembered them?

A. Oh, yes, I would.

2506

Mr. Preston: That is all.

Mr. Johnson: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

WHEREUPON a recess was taken until 2:00 o'clock p. m. of the same day.

Chicago, February 9, 1923.
2:00 o'clock p. m.

2507

Parties met pursuant to recess.

PRESENT: Counsel as before.

JOHN A. WEBER, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Preston:

2508

Q. 1. Mr. Weber, will you please state your name, age, residence and occupation?

A. My name is John A. Weber; age, thirty-seven years; residence, 5110 North Bernard Street, Chicago; occupation, cigar merchant.

Q. 2. Mr. Weber, do you manage more than one cigar store?

A. Yes.

Q. 3. How many stores?

A. Seven.

Q. 4. In what part of Chicago are those stores located?

A. Well, there is five on the North Side and one on the West Side and one on the Northwest Side. 2509

Q. 5. And what is the address of this store where you are now?

A. 754 North Clark Street.

Q. 6. Mr. Weber, do you spend most of your time in one or the other of these stores?

A. Most of the time is here. Of course, I work in all of them off and on. I am in there every day, but do not stay there continuously.

Q. 7. Do you wait on customers yourself?

A. Oh, yes.

Q. 8. Mr. Weber, do you handle Beech-Nut Scrap tobacco? 2510

A. Yes, sir.

Q. 9. For how long a time have you handled that?

A. Well, I guess ever since it is on the market.

Q. 10. Is it a good seller?

A. It is my best seller in scrap.

Q. 11. Do you sell half as much of any other scrap tobacco as you do Beech-Nut?

A. Yes, we sell over half as much, but not as much as Beech-Nut, but I guess more than half as much.

Q. 12. Do you know what company makes the Beech-Nut Scrap tobacco? 2511

A. P. Lorillard.

Q. 13. Do you handle many Lorillard products?

A. Handle all their brands salable in this district.

Q. 14. Would you name some of the leading Lorillard brands that you handle?

A. Beech-Nut cigarettes; Beech-Nut tobaccos; Union Leader; Climax; Havana Blossom.

Q. 15. Do you handle any other Turkish cigarettes manufactured by the Lorillard Company?

A. Yes.

- 2512 Q. 16. Name some of them, please.
A. Murads, Moguls, Helmars.
- Q. 17. How long have you handled Beech-Nut cigarettes, Mr. Weber?
A. Ever since they were put on the market. How long ago that is, I cannot remember.
- Q. 18. Can you remember about how long you have handled them?
A. It is rather hard to tell just how long, because I did not pay any attention to it, whether it is two years or three years; I guess it is all of three years. I am not positive of that, I won't swear to that just definite.
- 2513 Q. 19. Have you always known Beech-Nut cigarettes were manufactured by the Lorillard Company?
A. Yes, sir.
- Q. 20. Can you remember who the salesman was who first sold you those cigarettes?
A. No, I cannot; I am not positive.
- Q. 21. Do you remember whether, at the time the cigarettes first came on this market, you had them displayed in your store and had any advertising matter advertising the cigarette?
A. Yes, I gave them window displays, featured them in the windows, when they first came out.
- 2514 Q. 22. Do you sell Beech-Nut chewing gum?
A. Yes.
- Q. 23. Beech-Nut mints?
A. No.
- Q. 24. Do you know what company manufactures Beech-Nut chewing gum?
A. Beech-Nut Products Company, I guess that is it, Beech-Nut Packing Company.
- Q. 25. Mr. Weber, have you ever heard any remarks, inquiries or comments among your customers or others to the effect or which would lead you to believe they thought Beech-Nut Scrap tobacco or Beech-Nut ciga-

rettes to be the product of the same company that manufactures Beech-Nut chewing gum? 2515

A. There was one, about once or twice that question was asked, wanted to know whether it was made all by one company or not.

Q. 26. About how many times do you think that was?

A. Once or twice, and I happened to be on watch at that time.

Q. 27. Was that when the cigarettes first came out?

Mr. Johnson: Objection by Mr. Johnson to this question as leading.

A. Yes, that was shortly after the cigarettes were put out. 2516

Q. 28. What did you tell those people who asked you whether it was made by the same company?

A. Well, being acquainted with both companies, I just told them one was made by the packing company that makes bacons and hams, and the other was made by P. Lorillard Company, the tobacco company; there was no confliction between the two at all.

Q. 29. Did you ever know of a tobacco company which manufactured food products or confections?

A. Did I ever know of any? 2517

Q. 30. Yes, sir.

A. Not that I know of.

Q. 31. Do you regard gum and tobacco or cigarettes as in the same or different classes?

A. Different classes.

Q. 32. Did you ever see a package put out by the Beech-Nut Packing Company which looked like Lorillard's Beech-Nut Scraps tobacco or cigarette packages?

A. No, I can't say that I did.

Q. 33. Do you think that anyone could possibly mis

2518 take the gum package for either the scrap tobacco package or the cigarette package?

A. No, I do not think they can.

Q. 34. Mr. Weber, do you sell fountain pens in your store?

A. Yes.

Q. 35. Razor blades?

A. Yes.

Q. 36. Pencils?

A. Yes.

Q. 37. Toys?

A. Toys?

2519 Q. 38. Yes, sir.

A. No. No, not as a rule; a few little toys.

Q. 39. Playing cards?

A. Playing cards; yes.

Q. 40. Pictures?

A. No. Those are tablets.

Q. 41. Stationery?

A. Yes.

By Mr. Preston: That is all.

Cross Examination.

2520 By Mr. Johnson:

X-Q. 42. Mr. Weber, how long have you been in the tobacco business all together?

A. Twenty-three years.

X-Q. 43. And are you the proprietor of this store at the present time?

A. Well, I am one of the partners; yes.

X-Q. 44. What is the name of the concern?

A. Neubauer & Weber. We have not been partners all those twenty-three years. Of course, I have been in the business twenty-three years.

X-Q. 45. Is Neubauer & Weber the name of the concern? 2521

A. That is the name of this concern.

X-Q. 46. That owns these seven stores you have referred to?

A. Yes.

X-Q. 47. What do you call your chain of stores?

A. N & W Cigar Stores.

X-Q. 48. Which one is your headquarters?

A. 754 North Clark.

X-Q. 49. Which one are you in most of the time?

A. 754 North Clark.

X-Q. 50. You do a wholesale or jobbing business, as well as retail? 2522

A. No; all retail.

X-Q. 51. Do you wait on the counter yourself?

A. Oh, yes.

X-Q. 52. In 754 North Clark Street?

A. Yes, always work, in case somebody is sick step in to help out.

X-Q. 53. How many clerks do you keep in this store as a rule?

A. Two.

X-Q. 54. At one time?

A. No, one man at one time; two men here besides the bosses. 2523

X-Q. 55. About how many customers a day do you have in this store?

A. About five hundred a day.

X-Q. 56. With one man, as a rule, waiting on them?

A. Yes.

X-Q. 57. About what size, approximately, is this store, the front?

A. About eleven by twenty-eight.

X-Q. 58. During all these twenty-three years have you been in the retail tobacco trade?

2524 A. Well, we used to be in wholesale and retail a part of the time; it is all retail now.

X-Q. 59. When you first saw the Beech-Nut Scrap tobacco, whose product did you think it was?

A. P. Lorillard's.

X-Q. 60. When you first saw Beech-Nut cigarettes, whose product did you think they were?

A. Beech-Nut cigarettes? P. Lorillard.

X-Q. 61. Did you know they were made by the P. Lorillard Company before you ever saw a package of them?

A. Yes, sir.

2525 X-Q. 62. You are kept pretty busy waiting on your customers when you are behind the counter?

A. At times. There are times of the day I am not so busy.

X-Q. 63. Do you have many purchasers come in and ask you who makes the article that they are buying?

A. No. Very seldom.

X-Q. 64. As a rule, do you have much conversation with your customers?

2526 A. Well, at times. People you are well acquainted with you get in conversation with; customers sometimes start in to talk and get ideas of merchandise, want to know things about them.

X-Q. 65. And have you heard some discussion as to whether the Beech-Nut cigarettes are made by the same people that make the Beech-Nut chewing gum?

A. Never. No, I can't say that I ever heard that.

X-Q. 66. Did you ever hear any questions asked as to who makes the Beech-Nut cigarettes?

A. Only once or twice, as I stated before.

X-Q. 67. Can you describe those incidents that you have just mentioned? Remember what the people said at the time?

A. All I can say is, one party says, "Are they all made by the same people?" I says, "No." 2527

X-Q. 68. What did they mean, were they all made by the same people, what were they referring to?

A. Well, Beech-Nut gum and Beech-Nut cigarettes.

X-Q. 69. And how many times have you been asked questions like that?

A. Twice, to my knowledge; that is all.

X-Q. 70. Do you remember the parties?

A. No, I do not.

X-Q. 71. Do you remember about when it was?

A. No, I can't say that either.

X-Q. 72. When did you first put in the Beech-Nut cigarettes? 2528

A. When P. Lorillard first introduced them in the City of Chicago; how long ago, I do not know.

X-Q. 73. Can you remember about when it was?

A. I can't exactly tell you that, whether it was two years or three years.

X-Q. 74. Did you make any effort to remember any such instances as you have just mentioned, of people asking whether the Beech-Nut cigarettes and chewing gum were made by the same people, did you make any particular effort to remember such things?

A. No, I have not.

X-Q. 75. You might have heard some more then that you do not remember, might you not? 2529

A. The reason of me remembering those two is because the names were all so much alike. That is the reason I remember that, you see, and made by different corporations. Otherwise I am positive I never heard anything said about it.

X-Q. 76. When people have come into your stores, within your long experience in the tobacco business, do they usually ask for cigarettes or tobacco by the name of the brand?

A. Oh, yes; yes.

2530 X-Q. 77. Would you say that cigarettes and tobacco sell by the brand?

A. By the brand; yes.

X-Q. 78. Did you ever have a purchaser come in and ask for Reynolds' Camels?

A. No.

X-Q. 79. Or American Tobacco Company's Lucky Strikes?

A. No. Never.

X-Q. 80. Or Lorillard's Beech-Nut cigarettes?

A. No.

2531 X-Q. 81. Do they always ask for the cigarettes or tobacco by the name of the brand?

A. They do.

X-Q. 82. Have you handled Lorillard Company's products for many years?

A. Ever since I am in this business, some brands; some one of their brands at all times.

X-Q. 83. Have you handled a great many of their goods?

A. Yes, carry a big line of stuff that is sold in this market.

X-Q. 84. Have you been acquainted with their salesmen in this district?

2532 A. Oh, yes.

X-Q. 85. Do you know Mr. Brown, the district sales manager in Chicago now?

A. I do.

X-Q. 86. About how long have you been acquainted with him?

A. Well, I should judge about two years; maybe longer; I can't say for sure.

X-Q. 87. Are you the buyer for your seven stores?

A. Yes, sir.

X-Q. 88. Do you know the Lorillard salesmen pretty well?

A. I know their entire force here, that is, all their district managers in this territory. 2533

Mr. Johnson: That is all.

Re-direct Examination

By Mr. Preston:

R-D Q. 89. Mr. Weber, did you ever know a Lorillard salesman to misrepresent one of the products he was handling?

A. No.

2534

Mr. Preston: That is all.

Mr. Johnson: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

NATHAN ADELMAN, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

Direct Examination

2535

By Mr. Preston:

Q. 1. Mr. Adelman, will you state your name, age, residence and occupation?

A. My name is Nathan Adelman; residence, 3901 South Halsted Street, Chicago; age, about thirty-two, am going on my thirty-third year; and occupation, cigar business; cigars, candy and tobacco.

Q. 2. And where is your store located?

A. 3901 South Halsted.

2536 Q. 3. Mr. Adelman, how long have you been in this business?

A. How long I been entirely in business, you mean, or in this place?

Q. 4. In the tobacco business.

A. In the tobacco business, around eight years.

Q. 5. How long have you been in this store?

A. You see, I was next door. I was over a year next door and then I moved in here; about three months since I moved from the next door over.

Q. 6. Mr. Adelman, do you carry various other products besides tobacco?

2537 A. I do. Gloves—

Q. 7. Could you name some of the other things you carry besides tobacco?

A. Gum, candy. Chewing gum and smoking articles like pipes, and a little hosiery; not much.

Q. 8. Do you sell flashlights?

A. Yes.

Q. 9. Do you sell stationery?

A. Very little. Most of my business is on the tobacco business; that is most of my business.

Q. 10. Do you carry playing cards?

A. Yes.

2538 Q. 11. Stationery?

A. Stationery? Just a very little in stationery.

Q. 12. Pencils?

A. Yes, pencils.

Q. 13. Mr. Adelman, do you know of the Lorillard Company?

A. Yes, I know them; I have been dealing with them since I am in business.

Q. 14. What business are they in?

A. They are in the tobacco business.

Q. 15. Will you name some of the Lorillard brands you handle?

A. What do you want on the tobacco, scrap tobacco 2539
or little cigars, plug tobaccoes, or what?

Q. 16. A few of each, please.

A. I handle Climax. I handle Red Cross and I
handle—Climax, that means all sizes, you know. And
I handle tobaccos, Union Leader, Havana Blossom,
Beech-Nut Scrap, Tiger Fine-cut, Comic, Open Book;
little cigars, Royal Bengals, Flexo, Giants and then
Between-the-Acts, Sub Rosa. And on cigarettes, as far
as I know, what I am handling of their stock is Beech-
Nut cigarettes, Murad, Helmar. That is three that I
know.

Q. 17. How long have you been handling Beech-Nut 2540
Scrap tobacco?

A. Since I am ever in business.

Q. 18. Mr. Adelman, do you know what company
manufactures Beech-Nut Scrap tobacco?

A. What company?

Q. 19. Yes, sir.

A. As far as I know, it is P. Lorillard.

Q. 20. Have you known ever since you have handled
Beech-Nut Scrap tobacco it was a product of the Lor-
illard Company?

A. Yes.

Q. 21. Is Beech-Nut Scrap tobacco a good seller? 2541

A. Absolutely a good seller. It is the best seller in
scrap tobacco with me. As far as I know, it is the best
seller I have in scrap tobacco.

Q. 22. Is your store located near the Chicago Union
Stock Yards?

A. Yes.

Q. 23. How much Beech-Nut scrap tobacco do you
suppose you sell in a week?

A. Two gross.

Q. 24. How many packages in a gross?

A. A hundred and forty-four packages in a gross

2542 and two hundred and eighty-eight packages a week is what I sell.

Q. 25. About how long have you handled Beech-Nut cigarettes?

A. Since they ever came out.

Q. 26. And can you remember about how long ago that was?

A. Oh, that must have been a little over a year since; must have been about August; a little over a year. That is as far as I know; must have been around August or something like that.

2543 Q. 27. Do you know what company manufactures Beech-Nut cigarettes?

A. Yes. P. Lorillard Company.

Q. 28. Do you remember what salesman first sold you Beech-Nut cigarettes?

A. What salesman sold me the first Beech-Nut cigarettes? I think, if I don't mistake—It is kind of hard to remember, but if I don't mistake, it was a blonde fellow. I don't know exactly his name. He always used to wear a derby.

Q. 29. Can you remember whether or not, when he sold you these cigarettes, he told you he was a representative of the Lorillard Company?

2544 A. Yes; absolutely.

Mr. Johnson: Objection by Mr. Johnson to leading questions.

A. Yes; absolutely he told me.

Q. 30. Did you finish your answer to that question?

A. On that, yes.

Q. 31. Do you remember whether or not he had advertising matter with him at that time?

A. Yes, he did have posters.

Q. 32. Did he put any posters up in your store?

A. Yes, he did. He told me that would help sell the Beech-Nut cigarettes from Lorillard. 2545

Q. 33. Do you handle Beech-Nut chewing gum?

A. Yes. Here they are (indicating).

Q. 34. Do you sell any Beech-Nut mints or candies?

A. No, that is the only thing I handle; that is the only thing. Always a good seller is Beech-Nut gum.

Q. 35. Do you know what company manufactures Beech-Nut chewing gum?

A. As far as I know, it is the Beech-Nut packers, what they call them.

Q. 36. Have you heard any remarks, inquiries or comments among your customers or anybody else to the effect or which would lead you to believe that they thought Beech-Nut cigarettes or Beech-Nut Scrap tobacco were made by the same company that manufactured Beech-Nut chewing gum? 2540

A. No. The only thing when the Beech-Nut cigarettes were out, the same company, P. Lorillard, what manufactures Beech-Nut Scrap. In case they ain't any good, the Lorillard Company is supposed to be back of them.

Q. 37. You never heard anything which indicated that people thought the Beech-Nut Packing Company made Beech-Nut cigarettes; is that right? 2547

A. No, not as I know.

Q. 38. Did you ever know of a tobacco company that manufactured any confections or chewing gum?

A. Chewing gum, any manufacturer?

Q. 39. Did you ever know of a tobacco company that manufactured any chewing gum?

A. No, not as I know.

Q. 40. Do you regard gum and tobacco or cigarettes as in the same or separate classes?

A. What? The gum with the tobacco?

Q. 41. Yes.

A. Separate; absolutely separate.

2548

Cross Examination.

By Mr. Johnson:

X-Q. 42. Are you engaged in the retail tobacco trade?

A. Retail tobacco, candy and gum.

X-Q. 43. And how long have you been in the tobacco business all together?

A. About eight years.

X-Q. 44. Been in the retail trade all that time?

A. Been in the retail trade all that time.

X-Q. 45. Are you the proprietor of this store?

2549

A. Yes, sir.

X-Q. 46. Is this a corner store?

A. Yes, sir.

X-Q. 47. On what corner?

A. It is on the southeast corner.

X-Q. 48. Of what streets?

A. Halsted and Pershing Road. Used to be Thirty-ninth.

X-Q. 49. Is this a busy corner?

A. Yes, sir; absolutely busy corner.

X-Q. 50. About what size is this store?

A. About twenty-eight front by twenty-five feet
2550 depth.

X-Q. 51. About how many customers a day do you have in here?

A. Average between four and five hundred.

X-Q. 52. How many clerks do you have?

A. Me and my wife.

X-Q. 53. Just you and your wife?

A. Yes. Summer time we get a clerk, but not in the winter time.

X-Q. 54. You try to keep just one in here at a time, just one clerk?

A. One; yes.

X-Q. 55. Then you are pretty busy waiting on customers, are you not? 2551

A. Too busy in the mornings. In the day time we can take care of it, but in the morning it is too busy.

X-Q. 56. Do you have much time to talk to customers?

A. Of the day certain hours I can and certain hours I don't.

X-Q. 57. Does a customer often come in to buy cigarettes or tobacco and ask you, while he is buying it, who makes it?

A. Yes, many times. When the Beech-Nut cigarettes came out there are many times they asked me.

X-Q. 58. Did they ask you the same thing about the Beech-Nut Scrap tobacco when it came out? 2552

A. Well, it was too early for me then; when they first came out I was too young; I was maybe not born yet.

X-Q. 59. You mean you do not remember?

A. No.

X-Q. 60. Have you heard many people ask whether the Beech-Nut cigarettes and Beech-Nut gum were made by the same people?

A. Beech-Nut gum and Beech-Nut cigarettes, they are made by the same people? No. Once in a while a fellow asks and sometimes says, "There are so many Beech-Nut." I says, "Beech-Nut cigarettes is Lorillard's and Beech-Nut gum is Beech-Nut Packing Company's." 2553

Q-X. 61. Have a good many people asked you that?

A. No, just one since I am in this place; just one or two.

X-Q. 62. How long have you been in this place?

A. Both of them together I acquired, you see.

X-Q. 63. Yes.

A. Just about a year and a half.

2554 X-Q. 64. You didn't try to remember such people asking such things, did you?

A. I do when I talked to them. I remember they never asked me, just but two. I guess I am right.

X-Q. 65. Do they ever come into your store and just ask for Beech-Nut?

A. They come in here and ask for Beech-Nut gum if they want gum, and if they want chewing tobacco that is what they ask for. When they come in they ask for Beech-Nut Scrap or they ask for a package of Beech-Nut gum if they want gum.

2555 X-Q. 66. Do you ever have people come in and just ask for Beech-Nut, without saying whether it is gum or cigarettes?

A. Once in a while; yes.

X-Q. 67. What do you do in a case like that?

A. I ask him what he wants, if he says "Beech-Nut," "What kind of a Beech-Nut you want?" If it is gum they say "Beech-Nut gum," or if it is Beech-Nut cigarettes, they say "Beech-Nut cigarettes."

X-Q. Have you a front window along the Halsted Street sidewalk across nearly the entire front of your store?

A. Yes.

2556 X-Q. 69. What advertising have you in that window now?

A. Now I have got little cigars, all that stuff.

X-Q. 70. Name some of it, some of the brands that you are advertising in your window today.

A. You mean right now?

X-Q. 71. Yes.

A. They just trimmed a little while ago. You mean the entire window?

X-Q. 72. Name some of the brands advertised in the window.

A. Flexo Giants, Royal Bengals, Sub Rosa, Beech-Nut cigarettes and Camel cigarettes and Lucky Strikes; Chesterfields. 2557

X-Q. 73. Are those in the window now?

A. Yes.

X-Q. 74. Are you sure?

A. Yes; absolutely.

X-Q. 75. Are Murad cigarettes advertised in your window?

A. Yes.

X-Q. 76. Today?

A. Yes.

X-Q. 77. Are Helmar cigarettes?

2558

A. Yes.

X-Q. 78. Are Beech-Nut cigarettes?

A. In the window; yes; in a carton, and the display.

X-Q. 79. Beech-Nut Scrap tobacco advertised in your window today?

A. Yes.

X-Q. 80. Is Climax advertised in your store today?

A. Yes.

X-Q. 81. Is there a permanent large red sign appended at the top of your window, about three feet high, advertising Murad cigarettes, all the way across the front? 2559

A. No, not all the way across; just half of the window.

X-Q. 82. Half ways?

A. Half ways Murad and half ways Helmar. I got two Helmar and one Murad with big letters, is what I mean.

X-Q. 83. People approaching your store from the front today might think this was a Lorillard store, might they not?

A. I don't know what they think. I know it ain't.

X-Q. 84. Have you been keeping Lorillard products many years?

2560 A. Oh, yes; since I am in business I always got Lorillard goods.

X-Q. 85. Have you sold a great many of them?

A. Yes. Wherever I got a good store always sell lots of stuff?

X-Q. 86. Do you know the Lorillard salesmen in this district?

A. Yes.

X-Q. 87. Do you know Mr. Brown, the head salesman for Lorillard's in this district?

A. Yes; know Mr. Brown, Mr. Degan, and I know Berkley and I know Meyers; that is the advertising man.

2561 X-Q. 88. How long have you known Mr. Brown?

A. Oh, I know Mr. Brown since I am in business.

X-Q. 89. How have the Beech-Nut cigarettes sold in your store since they first came out?

A. Pretty good.

X-Q. 90. About how many did you sell when they were selling best?

A. Selling best, I was selling about two thousand a week.

X-Q. 91. About when was that, that they were selling two thousand a week?

2562 A. They were selling around September, October, November of last year.

X-Q. 92. What year?

A. 1922.

X-Q. 93. Are you selling many of them now?

A. I did sell more when they first came out than I do now. I am selling about a thousand a week; five cartons, two hundred to a carton, that is a thousand cigarettes.

X-Q. 94. Have you heard any complaints as to the quality of the Beech-Nut cigarettes?

A. No. But they always come out with twelve cigarettes for so much, all different prices on different

quality, so people nowadays they like what is cheaper, you know. 2563

X-Q. 95. In your experience in the tobacco business, Mr. Adelman, do customers usually ask for a cigar, cigarette or tobacco by the name of the brand?

A. Absolutely; absolutely.

X-Q. 96. Do many customers ask you for the name of the brand, together with the name of the maker, like Reynolds' Camel cigarettes?

A. No.

X-Q. 97. Did anybody ever ask you for cigarettes that way?

A. No. No, they come in and ask for Beech-Nut Scrap tobacco, Beech-Nut cigarettes, and if they want Beech-Nut cigarettes they say Beech-Nut cigarettes. 2564

X-Q. 98. They do not say Lorillard cigarettes?

A. No, they say Beech-Nut cigarettes.

Re-direct Examination.

By Mr. Preston:

R-D Q. 99. Mr. Adelman, do you advertise Lorillard brands very extensively at your store?

A. Same as I do all the rest of them.

2565

Mr. Preston: That is all.

Re-cross Examination.

By Mr. Johnson:

R-X Q. 100. But your show window in front today, Mr. Adelman, contains almost exclusively Lorillard products, does it not?

A. Yes.

2566 R-X Q. 101. About how long do you keep the same display in the window?

A. About every four weeks, probably a couple of days before or a couple of days after; every month we change the displays.

Mr. Johnson: That is all.

Re-direct Examination.

By Mr. Preston:

2567 R-D Q. 102. Mr. Adelman, do you carry many products manufactured by the Reynolds Tobacco Company?

A. Yes.

R-D Q. 103. Do you sell a great many of the Reynolds Tobacco Company's products?

A. Camels and Prince Alberts.

R-D Q. 104. Do you carry a great many products manufactured by the American Tobacco Company?

A. Yes.

R-D Q. 105. Do you sell a great many of the American Tobacco Company's products?

A. Yes. Want me to mention the names?

2568 R-D Q. 106. No, that is not necessary. Do you carry a great many products manufactured by the Liggett & Meyers Tobacco Company?

A. Yes.

R-D Q. 107. What brand of cigarettes do you sell most of?

A. Camels.

R-D Q. 108. What company is that manufactured by?

A. That is Reynolds', R. J. Reynolds. Then comes next Lucky Strikes; that is the American Tobacco Company's; Chesterfield is Liggett & Meyers'.

R-D Q. 109. What is your best selling scrap tobacco?

A. Beech-Nut Scrap.

R-D Q. 110. What company manufactures that? 2569
A. P. Lorillard.

Re-cross Examination.

By Mr. Johnson:

R-X Q. 111. Do you buy large quantities of Lorillard's products?
A. Yes.

Re-direct Examination.

By Mr. Preston: 2570

R-D Q. 112. Do you buy large quantities of Reynold's products?
A. Reynolds? Yes, one brand; Camel.

Mr. Preston: That is all.

Mr. Johnson: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

JACOB SHANFIELD, called as a witness on behalf 2571
of the defendant, P. Lorillard, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Preston:

Q. 1. Will you please state your name, age, residence and occupation?

A. My name is Jacob Shanfield; age, forty-five; residence, 742 West Forty-third Street, Chicago, Illinois; occupation, merchant, I always call it.

2572 Q. 2. Will you name some of the kinds of things that you sell in your store?

A. Cigars, cigarettes, tobacco, candies, notions, stationery, gum.

Q. 3. Do you sell sporting goods?

A. Yes, sir.

Q. 4. Do you sell toys?

A. Toys; yes, sir.

Q. 5. Do you sell stationery?

A. Yes, sir; I mentioned that.

Q. 6. About how large is your store, Mr. Shanfield? About what are the dimensions of it?

2573 A. Width twenty; length about forty.

Q. 7. Mr. Shanfield, do you know of the Lorillard Company?

A. Yes, sir.

Q. 8. What line of business are they engaged in?

A. Tobacco.

Q. 9. Do you handle many Lorillard brands?

A. I do, sir.

Q. 10. Would you name a few of the leading Lorillard brands that you handle?

A. Climax chewing tobacco, Union Leader smoking, Beech-Nut Scrap tobacco, Beech-Nut cigarettes.

2574 Q. 11. Do you handle any Turkish cigarettes manufactured by Lorillard?

A. Yes, sir.

Q. 12. How long have you handled Beech-Nut Scrap tobacco, Mr. Shanfield, about how long?

A. A few years; I don't know exactly; since the Beech-Nut is out.

Q. 13. Could you say about how many years that has been?

A. Five or six years.

Q. 14. Do you know what company makes that?

A. The Lorillard.

Q. 15. Have you known the Lorillard Company made Beech-Nut tobacco since you have been handling it? 2575

A. Ever since I have been handling it?

Q. 16. Yes, sir.

A. Yes, sir.

Q. 17. Do you handle Beech-Nut cigarettes?

A. Yes, sir.

Q. 18. How long have you handled them?

A. Two or three years, I think, ever since they came out.

Q. 19. Do you know what company makes them?

A. P. Lorillard.

Q. 20. Is the Beech-Nut Scrap tobacco a good seller? 2576

A. Yes, sir.

Q. 21. Is it your best selling scrap?

A. Yes, sir.

Q. 22. How do the Beech-Nut cigarettes sell with you, sir?

A. Not so good.

Q. 23. Do you handle Beech-Nut chewing gum?

A. Yes, sir.

Q. 24. Do you know what company manufactures that?

A. No, sir.

Q. 25. Did you ever think that the Lorillard Company made Beech-Nut chewing gum? 2577

A. No, sir.

Q. 26. Have you ever heard any remarks, inquiries or comments among your customers or others to the effect or that led you to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were manufactured by the same company that makes Beech-Nut gum?

A. No, sir.

Q. 27. Do you handle any Beech-Nut mints or candies?

A. No.

2578 Q. 28. Did you ever know of a tobacco company that manufactured candies or chewing gum?

A. No, sir.

Q. 29. Do you regard tobacco and cigarettes as in the same or a different class from chewing gum?

A. Certainly I do.

Q. 30. The same or different?

A. Different.

Q. 31. Do you think that either the Beech-Nut Scrap tobacco package or the Beech-Nut cigarette package looks like a chewing gum package?

A. No, sir.

2579 Q. 32. What would you think of any man who would accept scrap tobacco or cigarettes in the place of chewing gum?

A. In the place of chewing gum, no, sir; he would not accept it. He would laugh at me.

Q. 33. Can you remember who the salesman was who first sold you Beech-Nut cigarettes?

A. No, sir.

Q. 34. Do you remember whether, when you first put Beech-Nut cigarettes on sale there was any advertising matter put up in your store by the salesman, advertising the Beech-Nut cigarettes?

2580 A. I don't know whether they made a demonstration here or not at that time.

Q. 35. Can you remember whether any posters or such advertising matter as that was put on display in your store?

A. In the store, no, sir; outside in the store, in the window might be, but not in the store.

Q. 36. About how many customers a day do you have here?

A. About five hundred.

Mr. Preston: That is all.

Cross Examination.

2581

By Mr. Johnson:

X-Q. 37. Are you the proprietor of this store, Mr. Shanfield?

A. Yes, sir.

X-Q. 38. Is your store at 742 West 43rd Street, Chicago?

A. Yes, sir.

X-Q. 39. How long have you been in the tobacco business all together?

A. Thirteen years.

X-Q. 40. Have you been in the retail tobacco business all that time?

A. Yes, sir.

X-Q. 41. How long have you had a store of your own?

A. All that time.

X-Q. 42. Thirteen years?

A. Yes, sir.

X-Q. 43. How long have you been at this address?

A. Same time.

X-Q. 44. At the same store all that time?

A. Yes, sir; same store all that time.

X-Q. 45. How many clerks do you have in this store?

A. None.

X-Q. 46. How many wait on the counter at one time?

A. Helps me, my wife and child, two at one time.

X-Q. 47. You try to keep two here the most of the time?

A. Most of the time; yes, sir.

X-Q. 48. Are you kept pretty busy waiting on customers?

A. Well, not all day; mornings and evenings mostly.

2582

2583

2584 X-Q. 49. Do many customers who come in to buy cigarettes or tobacco ask you who makes the cigarettes or tobacco that they buy?

A. No, sir.

X-Q. 50. They are not very often interested in who makes them?

A. No, sir.

X-Q. 51. Have you had any people ask you who made the Beech-Nut cigarettes?

A. No, sir.

2585 X-Q. 52. Have you heard any people discussing whether the same people make the Beech-Nut cigarettes that make the Beech-Nut chewing gum?

A. No, sir.

X-Q. 53. Did you ever hear anybody talking about that or asking about it?

A. No, sir.

X-Q. 54. Did you try to remember any such things if it had happened?

A. I think I would remember if it had happened?

X-Q. 55. Did you have any reason to try to remember such questions or remarks, if you heard them?

A. No, not particularly.

X-Q. 56. Who makes the Camel cigarettes?

2586 A. J. R. Reynolds & Company.

X-Q. 57. Who makes the Fatimas?

A. Liggett & Meyers.

X-Q. 58. Who makes the London Life cigarettes?

A. P. Lorillard.

X-Q. 59. Do people ever come in your store and just ask for Beech-Nut, without saying cigarettes or gum?

A. Yes, sir, sometimes they do and I ask them, "Gum?" Then they laugh at me. The majority of my customers are tobacco chewers and if I ask them "Gum?" they laugh at me and say, "What do you think I am, a gum chewer?", or something like that.

X-Q. 60. Does that happen a good many times? 2587

A. Yes, sir, it happens sometimes. A lady sometimes comes in and asks me for Beech-Nut and I say, "You want a cigar or tobacco?" and she laughs the other way and says, "No, I want gum." That happens almost every day.

X-Q. 61. Do you find through your experience of thirteen years that your customers ask for a cigarette or tobacco by the name of the brand?

A. By the name of the brand; yes, sir.

X-Q. 62. Do they ask you for a brand made by the American Tobacco Company or—

A. No, sir.

2588

X-Q. 63. Or naming the maker?

A. No, sir. Sometimes they come and ask me and give me the P. A., or there was a tobacco by the name J. R. There was one tobacco, J. R. Reynolds, and that was on the package, big J and big R. J. R.

X-Q. 64. Was that generally asked for in any way except by the name of the brand?

A. Brand.

X-Q. 65. Would you say cigarettes and tobacco sell by the brand?

A. By the brand.

X-Q. 66. Have you a front display window facing the side walk on the front side of your store? 2589

A. Yes, sir.

X-Q. 67. Whose brands are you displaying in one half of your front window at the present time?

A. Mostly P. Lorillard Company.

X-Q. 68. What name is on the painted sign hanging out over your door with the street number "742 West 43rd Street" on it?

A. One side is Helmar and one side is London Life, I believe. Don't say what company.

X-Q. 69. Have you large posters up at the top of

2590 your show cases all around your room conspicuously advertising London Life, Murad, Helmar, Between-the-Acts, Murads,—have you?

A. Yes, sir.

X-Q. 70. Have you handled Lorillard products for many years?

A. Yes, sir.

X-Q. 71. Do you order large quantities of them, comparatively?

A. Well, comparatively; yes, sir.

X-Q. 72. Do you know the Lorillard salesman in the Chicago district?

2591 A. I know the most of them.

X-Q. 73. What ones do you know?

A. Well,— The names?

X-Q. 74. Yes.

A. Salesman by the name of Degan; Horder; Mr. Brown.

X-Q. 75. Do you know Mr. Brown, the head salesman in the Chicago district?

A. Yes, sir.

X-Q. 76. How long have you known him?

A. Five or six years.

2592 X-Q. 77. Did you know that the Beech-Nut Scrap tobacco was made by the Lorillard Company before you ever saw a package?

A. Well, I didn't know there was such a thing out, but when they got it here to sell, I knew it was made by P. Lorillard.

X-Q. 78. Did you know Beech-Nut cigarettes were made by the P. Lorillard Company before you ever saw a package of them?

A. No, sir.

X-Q. 79. Whom did you buy them from first?

A. From a salesman.

X-Q. 80. A Lorillard Company salesman?

A. Yes, sir.

X-Q. 81. One of the ones that you know?

2593

A. I couldn't say whether it was the ones I knew or whether it was a new sales.

X-Q. 82. When you ordered it from them did you know it was a Lorillard cigarette?

A. Yes, sir.

Mr. Johnson: That is all.

Re-direct Examination.

By Mr. Preston:

R-D. Q. 82. Mr. Shanfield, what is your best selling cigarette brand? 2594

A. Camel.

R-D. Q. 83. And what company is that made by?

A. J. R. Reynolds.

R-D. Q. 84. What is your next best selling cigarette?

A. Lucky Strike.

R-D. Q. 85. What company is that made by?

A. American Tobacco Company.

R-D. Q. 86. How do your sales of Beech-Nut Scrap tobacco compare with the sales of other scrap tobaccos?

A. Well, fifty per cent. more than the others.

R-D. Q. 87. What do you mean "fifty per cent. more than the others?" You mean all the others put together? What do you mean by "others?" 2595

A. Than all the others put together, sales fifty per cent. better than all the others put together.

R-D. Q. 88. On cross examination, Mr. Shanfield, you have referred to a line of posters advertising various tobacco brands which you have around the top of the shelves in your store. Have you a poster there advertising Omar cigarettes?

A. If I have? Yes, sir.

2572 R-D. Q. 89. Is the Omar cigarette a Lorillard brand?
A. No, sir.

R-D. Q. 90. Have you a poster there advertising Mee-
ca?

A. Yes, sir.

R-D. Q. 91. Is that a Lorillard brand?

A. No, sir.

R-D. Q. 92. Have you a poster there advertising To-
kio?

A. Yes, sir.

R-D. Q. 93. Is that a Lorillard brand?

A. No, sir.

2573 R-D. Q. 94. Have you a poster there advertising Rich-
mond Straight-cut cigarettes?

A. Yes, sir.

R-D. Q. 95. Is that a Lorillard brand?

A. No, sir.

R-D. Q. 96. Mr. Shanfield, will you state whether or
not if you had heard any considerable number of remarks
among your customers or others which indicated they
thought Beech-Nut Scrap tobacco or Beech-Nut ciga-
rettes were made by the company that makes Beech-Nut
chewing gum, you think you would have remembered it?

A. Yes, sir, I would have remembered it.

2574 R-D. Q. 97. Mr. Shanfield, do you sell Star tobacco?

A. Yes, sir, Star.

R-D. Q. 98. Do you sell Star razor blades?

A. Yes, sir.

R-D. Q. 99. Are they made by the same company?

A. No, sir.

R-D. Q. 100. Do you sell Velvet tobacco?

A. Yes, sir.

R-D. Q. 101. Do you sell Velvet pencils?

A. Yes, sir, I did sell them once.

R-D. Q. 102. Are they made by the same company?

A. No, sir

Re-cross Examination.

2576

By Mr. Johnson:

R-X. Q. 103. Has the Beech-Nut cigarette been a good seller with you?

A. Not very good; no.

R-X. Q. 104. How many did you sell a week when it was selling the best?

A. Well, about five hundred.

R-X. Q. 105. About when was that, about when was it selling the best?

A. Maybe a couple of years ago; I think it was about two years ago. 2576

R-X. Q. 106. Near the start?

A. Right after the start; yes, sir.

R-X. Q. 107. About how many of them are you selling a week now, of Beech-Nut cigarettes?

A. Oh, about a hundred and fifty or two hundred.

R-X. Q. 108. They are not selling very well now then?

A. No.

Mr. Johnson: That is all.

Mr. Preston: That is all.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived. 2577

2602

WILLIAM STEIDINGER, called as a witness on behalf of the defendant, P. Lorillard Company, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Preston:

Q. 1. Will you state your name, age, residence and occupation?

A. William Steidinger; my age is almost thirty; my residence is 716 West 19th Street. This is my store.
2603 I am a storekeeper.

Q. 2. Where is your store located?

A. 1157 West Forty-seventh Street.

Q. 3. Is that near an entrance to the Chicago Union Stock Yards?

A. Yes, sir.

Q. 4. In your store do you sell groceries, Mr. Steidinger?

A. Yes, sir.

Q. 5. Do you sell tobacco?

A. Yes, sir.

2604

Q. 6. Do you sell candy?

A. Yes, sir.

Q. 7. Do you sell dry goods?

A. Well, notions; I wouldn't call it dry goods; I call it notions.

Q. 8. Do you sell socks?

A. Yes, sir.

Q. 9. Shoe strings?

A. Shoe strings; yes, sir.

Q. 10. Hair nets?

A. Yes, sir.

Q. 11. Gloves?

A. Yes, sir.

Q. 12. About how many customers a day do you have Mr. Steidinger, in this store? 2605

A. Well, sir, let's see.

Q. 13. I mean just approximately; just give a general idea.

A. Well, between three hundred and fifty to four hundred customers.

Q. 14. And how long have you been located here, Mr. Steidinger?

A. About six months.

Q. 15. And what business were you engaged in before you came here?

A. Oh, well, the last position I had was bill clerk. 2606

Q. 16. You have been only a retail merchant for the past six months; is that correct?

A. Six months; yes, sir.

Q. 17. Do you handle Beech-Nut Scrap tobacco?

A. Yes, sir.

Q. 18. Do you know what company makes Beech-Nut Scrap tobacco?

A. The Beech-Nut is—I don't even know; I can't even tell you right now.

Q. 19. Mr. Steidinger, do you know of the Lorillard Tobacco Company?

A. Sure, I know of the Lorillard. 2607

Q. 20. Do you handle any of the Lorillard Tobacco Company's products?

A. Sure, I got Lorillard.

Q. 21. Could you name a few Lorillard products that you handle?

A. Well, sir, that is, the Climax is Lorillard's, isn't it? Yes.

Q. 22. Do you handle Beech-Nut cigarettes?

A. Beech-Nut cigarettes? Yes, sir.

Q. 23. Do you know what company makes Beech-Nut cigarettes?

2608 A. I do not know; no. I never paid any attention to that. You see, I buy from the jobbers; I don't even know half of the companies, who makes them.

Q. 24. I show you a package of Beech-Nut cigarettes, which is in this case as Plaintiff's Exhibit No. 1. Will you tell me whose name appears on the front of that package beneath the oval?

A. The P. Lorillard—The manufacturer?

Q. 25. Yes.

A. Yes. P. Lorillard Company.

Q. 26. Have you ever seen that before?

A. Oh, sure.

2609 Q. 27. Do you sell Beech-Nut chewing gum?

A. Yes, sir.

Q. 28. Do you know what company makes Beech-Nut gum?

A. Oh, now, let's see. They are in Canajoharie.

Q. 29. Do you know the name of the concern?

A. I think it is the Beech-Nut Manufacturing Company.

Q. 30. Were you ever under the impression that Beech-Nut Scrap tobacco and Beech-Nut cigarettes were made by the same company that makes Beech-Nut chewing gum?

2610 A. No, sir.

Q. 31. Mr. Steidinger, will you state whether or not it ever occurred to you to confuse Beech-Nut scrap tobacco and Beech-Nut cigarettes with Beech-Nut chewing gum?

A. It never did.

Q. 32. Did it ever enter your head that they were made by the same company?

A. No, sir.

Q. 33. Will you state, if you can, why it was that you never thought they were made by the same company?

A. Well, for one reason, two different names, two

different manufacturers, located at different places. 261
The trade-marks are not the same.

Q. 34. Did you ever hear of a tobacco company that manufactured any chewing gum?

A. Of a tobacco company that manufactured chewing gum? I did not.

Q. 35. Do you regard gum and tobacco or cigarettes as in any way related to one another?

A. No, sir.

Q. 36. Did I understand you to say, when I asked you a moment ago whether you knew what company made Beech-Nut Scrap tobacco, that you did not know what company made it? 2612

A. I didn't know it unless I took time. I didn't pay any attention to the manufacturers at that time. I know it was not a gum manufacturer; it was a tobacco.

Q. 37. Have you ever heard any remarks, inquiries or comments among your customers or others to the effect or which led you to believe that the Beech-Nut Scrap tobacco or the Beech-Nut cigarettes were made by the same company that makes the Beech-Nut gum?

A. No.

Q. 38. Mr. Steidinger, do you sell Beech-Nut cigarettes? 2613

A. Yes, sir.

Q. 39. Do you sell Tip-Top tobacco?

A. Yes, sir.

Q. 40. Do you sell Tip-Top bread?

A. Yes, sir.

Q. 41. Are they manufactured by the same company?

A. No, sir.

Q. 42. Do you sell Star tobacco?

A. Yes, sir.

Q. 43. Do you sell Star Bug Killer?

A. Yes, sir.

Q. 44. Are they manufactured by the same company?

A. No.

- 2614 Mr. Johnson: Objection by Mr. Johnson to this line of evidence as being immaterial and irrelevant. It is stipulated that this objection shall apply, without repetition, to all questions and answers along this same line.

Q. 45. Do you sell Sunshine cigarettes?

A. Yes, sir.

Q. 46. Do you sell Sunshine Biscuits?

A. Yes, sir.

Q. 47. Are they made by the same company?

A. They are not.

- 2615 Q. 48. I show you a package of Beech-Nut Scrap tobacco which is in this case as Defendant's Cross Exhibit No. 1 and ask you to tell me whose name appears on the front of that package?

A. Lorillard's.

Q. 49. Have you seen that name there before?

A. Always seen it there.

Q. 50. What did it mean to you when you saw it there?

A. It represented to me, it represented the name of the manufacturer.

- 2616 Mr. Preston: That is all.

Cross Examination.

By Mr. Johnson:

X-Q. 51. How long have you been in the tobacco business?

A. About six months.

X-Q. 52. You never were employed in a tobacco store before?

A. It was not exactly an employment. It was, you know what I mean, helping out here and there is all it was.

X-Q. 53. Are you the proprietor of this store here? 2617

A. Yes, sir.

X-Q. 54. About how much space does your tobacco stand occupy in your grocery store here?

A. Oh, well, I would say about one-third of the store.

X-Q. 55. How many feet long by what deep?

A. About eight by five feet.

X-Q. 56. How many clerks do you have in this store, any besides yourself?

A. Just only in the morning for one hour.

X-Q. 57. You keep just one here most of the time as an extra? One in the morning; is that the idea?

A. Yes.

X-Q. 58. Do many people who come in to buy cigarettes and tobacco ask you who makes the thing they buy? 2618

A. No, sir.

X-Q. 59. Did anybody ever ask you that?

A. No, sir.

X-Q. 60. About cigarettes and tobacco?

A. Well, wait a minute. They have asked me about cigarettes and tobacco; yes, if they were made by the same concerns, that is, in regard to the different brands of cigarettes.

X-Q. 61. Like which ones?

A. Well, for instance, Camels and Lucky Strikes, two of the most popular cigarettes that are made, that is, anyways, here. 2619

X-Q. 62. What people asked you?

A. Purchasers.

X-Q. 63. For instance, what would they ask you?

A. They would ask if those two brands of cigarettes were manufactured by the same people.

X-Q. 64. Did anybody ever ask you who makes the Beech-Nut cigarettes?

A. Beech-Nut cigarettes? No.

2620 X-Q. 65. Did you ever hear anyone ask or remark as to whether the Beech-Nut cigarettes were made by the same people that make the Beech-Nut gum?

A. No, sir.

X-Q. 66. Did you ever try to remember any such instances if they happened to you,—ever try to remember them?

A. I would naturally remember it because it would really bring up a discussion.

X-Q. 67. In the six months you have been in this business you do not remember any?

A. No, sir.

2621 X-Q. 68. When did you first see a package of Beech-Nut cigarettes?

A. Oh, gee, I don't remember exactly now.

X-Q. 69. Was it before you took over this store six months ago?

A. Yes, sir.

X-Q. 70. When you first saw the package, who did you think put it out?

A. Well, sir, on account of being a smoker, I naturally thought that one of the tobacco companies was putting it on the market. Of course, I didn't know who. But that is one of the first things a customer will say, if a new tobacco comes in, "Who is putting that on the market now?"

2622

X-Q. 71. Mr. Steidinger, did I understand you to say on direct examination that the trade-marks of the Beech-Nut tobacco and the Beech-Nut cigarettes and the Beech-Nut gum were not the same?

A. Yes, sir.

X-Q. 72. I place before you a package of each one of these articles I named, which are in this case as Defendant's Cross Exhibit No. 1, Plaintiff's Exhibit No. 1 and Defendant's Cross Exhibit No. 2, respectively. Now, will you tell me if on each one of these packages there is

the name "Beech-Nut" placed in a curve, with a hyphen in between the word "Beech" and "Nut?" 2623

A. Yes, there is.

X-Q. 73. Is the center of the label in each case made up of an oval in all three of those packages?

A. Yes, sir.

X-Q. 74. Is there a representation in the center of that oval of a beech nut in each of those packages?

A. Somewhat similar.

X-Q. 75. Is there a red oval on the package of Beech-Nut gum?

A. Yes, sir.

X-Q. 76. And is there red around the oval on each of the other packages? 2624

A. Not exactly the same kind of red; not exactly the same way. Entirely different. That is a red band upon the package of Beech-Nut gum, whereas the Beech-Nut cigarettes, almost the entire package is red. The Beech-Nut tobacco has red stripes extending in all directions.

X-Q. 77. But on each package there is red around the oval, isn't there?

A. Well, there is red all around the oval on the Beech-Nut cigarette, but not exactly as on the Beech-Nut tobacco.

X-Q. 78. Wouldn't you say there are similarities between those three? 2625

A. Well, there is and there ain't.

Mr. Johnson: That is all.

Re-direct Examination.

By Mr. Preston:

R-D. Q. 79. Mr. Steidinger, will you tell me what it is that catches your eye most prominently about the label on the package of Beech-Nut gum?

2626 A. What it is?

R-D. Q. 80. Yes.

A. Well, it would naturally be the trade-mark on it.

R-D. Q. 81. I mean what feature of the trade-mark. Is it the nut in the center, the name "Beech-Nut," the red band around the oval, or what is it that is the outstanding feature of the label?

A. The outstanding feature is, naturally, the red band, because at a short distance the nut is not quite discernible.

R-D. Q. 82. Is there any red band on the Beech-Nut cigarette package?

2627 A. There is no red band.

R-D. Q. 83. Is there a red band on the Beech-Nut Scrap tobacco?

A. I wouldn't call them bands. They are stripes, is what I would call them.

R-D. Q. 84. Does the label on the Beech-Nut gum package look to you like the label on the cigarette package or the scrap tobacco package?

A. No, sir.

R-D. Q. 85. Whose name appears on the front of the Beech-Nut Scrap tobacco above the oval shaped label?

A. Lorillard's.

2628 R-D. Q. 86. And whose name is written on the front of the cigarette package underneath the label?

A. Lorillard's.

R-D. Q. 87. Had you noticed the Lorillard name on both of these packages before I called your attention to it?

A. Oh, noticed it lots of times.

Mr. Preston: That is all.

Re-cross Examination.

2629

By Mr. Johnson:

R-X. Q. 88. Wouldn't you say, Mr. Steidinger, that there are points of similarity between those three labels?

A. Between the three?

R-X. Q. 89. Yes, the name "Beech-Nut" is on there with a hyphen in all three, isn't it?

A. Yes.

R-X. Q. 90. Wouldn't you say there are points of similarity in those three trade-marks?

A. Well, I can say there are, when you are in close proximity. By that I mean the nut on the wrapper of the gum is so small that in comparison with the nut shown on the package of cigarettes and scrap tobacco it is almost no comparison between the two.

2630

R-X. Q. 91. But the package is much smaller, the package of gum?

A. Yes, sir.

R-X. Q. 92. So everything is smaller on the package?

A. Oh, yes.

R-X. Q. 93. You keep the Lorillard products, do you not?

A. Yes, sir.

R-X. Q. 94. Any others besides Beech-Nut cigarettes and Beech-Nut Scrap tobacco?

2631

A. Well, let's see. That is one thing I have never paid much attention to, as I buy through jobbers. Climax tobacco and Havana Blossom. I don't know, I might have one or two more that I can't think of just now.

R-X. Q. 95. Do you know Mr. Brown, the head salesman for the P. Lorillard Company in the Chicago district?

2632 A. Oh, I might know him and might not; there are so many of them coming around.

R-X. Q. 96. Is this Mr. Brown, this gentleman standing here?

A. I don't know. He told me his name, but I might have forgotten it.

Re-direct Examination.

By Mr. Preston:

2633 R-D Q. 97. Mr. Steidinger, I call your attention to the design in the center of the label of the Beech-Nut gum package, which is in this case as Defendant's Cross Exhibit No. 2, and ask you whether there is a green leaf which forms the background of that representation of the nut?

A. There is a green leaf.

R-D Q. 98. And I call your attention to the design in the center of the label on the Beech-Nut Scrap tobacco package, which is in this case as Defendant's Cross Exhibit No. 1 and ask you whether there is any green leaf in that design?

2634 A. There is no green leaf on the package of scrap tobacco.

R-D Q. 99. Mr. Steidinger, state whether or not the label on the Beech-Nut gum package, taken as a whole, looks to you like the label on either the scrap tobacco package or the Beech-Nut cigarette package?

A. Taken as a whole? Well, no.

R-D Q. 100. What would you think of a man, Mr. Steidinger, who could be fooled into accepting a package of the Beech-Nut Scrap tobacco or the Beech-Nut cigarettes if he wanted this package of Beech-Nut gum?

A. He would either have to be deaf, dumb and blind or crazy.

Mr. Preston: That is all.

2635

Mr. Johnson: I am through.

By agreement of counsel for the respective parties to the above entitled cause, the signature of the witness to the foregoing deposition was waived.

Which were all of the proceedings had at the time and place indicated heretofore.

STATE OF ILLINOIS,)
County of Cook.) ss.:

I, Alice M. Rankin, a Notary Public within and for the County of Cook and State of Illinois, duly commissioned and qualified and authorized to administer oaths, and to take and certify depositions, do hereby certify that in the equity cause pending in the District Court of the United States, for the District of New Jersey, wherein Beech-Nut Packing Company is plaintiff and P. Lorillard Company is defendant, No. 3056, I was attended at Chicago, Illinois, on the 7th of February, 1923, by counsel for the respective parties, as appears above, and by Wade H. Brown, Jacob Gay, Jr., Frank C. Degan, Philip Ludwig Burgeson, William G. Sues, J. S. Weiner, David Kossack, William H. Getzelman, B. Ganek, John A. Weber, Nathan Adelman, Jacob Shanfield and William Steidinger, the witnesses named in the foregoing depositions; that said witnesses, being of sound mind and lawful age, were by me duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth in said cause, and thereupon they testified as appears in the foregoing depositions, and that counsel for the respective parties in each case waived the signature of the witness to his deposition, that said depositions were taken by me in shorthand and later transcribed by me into typewriting; that said

2636

2637

2638 statements were all taken in the presence of said witnesses at the time set forth and that all was done in the presence of counsel for both parties.

I further certify that the reason for taking said depositions was and is that the testimony of said deponents is material and necessary to the cause in the caption of said depositions named, and that they, the said deponents, live and reside at a place more than one hundred miles from the place where the said equity cause is appointed to be tried, to-wit, Trenton, New Jersey, in the District of New Jersey.

2639 I further certify that I am neither of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause, and that it being impractical for me to deliver said depositions with my own hand, I have retained the same for the purpose of being sealed up and directed and speedily and safely transmitted to the said court for which they were taken.

Witness my hand and seal as such Notary Public and Special Examiner, at Chicago, Illinois, on this 21st day of February, 1923.

ALICE M. RANKIN,
Notary Public

(SEAL)

2640

IT IS STIPULATED by and between the parties, through their respective counsel, that if CARL A. PAULSEN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

[Direct Examination.]

My name is CARL A. PAULSEN, address 534 South Clark St., occupation, owner and manager of six retail tobacco stores, four of which are located in the business

section of Chicago known as the "loop." In addition to tobacco I carry in these stores a small line of confections and chewing gum. In each of my stores an average of 500 customers is served daily. Although much of my time is spent in my office at 534 South Clark St., I visit all my stores frequently and may say that I am in close touch with what goes on in all of them. 2641

I have handled Beech-Nut Scrap tobacco since about 1915, and it is an excellent seller. I have always known that the Beech-Nut Scrap tobacco is a product of the P. Lorillard Co., and I have always known that company to be one of the largest and oldest tobacco concerns, since I have handled such of their well known brands as Murads, Moguls, Egyptian Deities, Turkish Trophies, Helmars, Climax Plug, Beech-Nut Scrap tobacco, etc. I have sold Beech-Nut cigarettes since they first appeared on this market in 1921, and have always known that this cigarette was made by the Lorillard Co. I handle Beech-Nut chewing gum and may say that it is my best selling gum. I have always known this to be a product of the Beech-Nut Packing Co. 2642

I regard tobacco and cigarettes as an entirely distinct line from chewing gum and confections and have never known of a food products company which made tobacco products, and have never seen a product of the Beech-Nut Packing Co. which looked at all like either the Beech-Nut cigarette package or the Beech-Nut Scrap tobacco package and I know that Lorillard's name appears upon both the Beech-Nut Scrap tobacco and Beech-Nut cigarette packages. I have never heard any remarks among my customers or others to the effect, or which would lead me to believe, that they thought the Beech-Nut Scrap tobacco or Beech-Nut cigarettes to be the products of the Beech-Nut Packing Company. I think that a man who would confuse tobacco or cigarettes with chewing gum must be crazy. 2643

2644

Cross Examination.

2645

I have handled Lorillard tobacco products and have known Lorillard salesmen for many years. I am acquainted with Mr. W. H. Brown, the Lorillard District Salesman for Chicago. I am kept very busy indeed and have not much opportunity to hear what customers are saying. They do not usually ask who makes the articles that they are buying. I have made no effort to remember any inquiries, remarks, or comments as to who makes the Beech-Nut Scrap tobacco or the Beech-Nut cigarettes, and had no reason to do so. When I say that I have never heard any such inquiries or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2646

IT IS STIPULATED by and between the parties, through their respective counsel, that if FRANK GOLDSTEIN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is FRANK GOLDSTEIN, of legal age, address, 534 S. Clark St., occupation, Ass't to Carl A. Paulsen in the management of six retail tobacco stores owned by him, four of which are located in the business section of Chicago known as the "loop." I divide my time about equally among these six stores and myself wait upon customers in all of them. I have sold Beech-Nut Scrap

tobacco since about 1915, and have always known it to be a product of P. Lorillard Co. I remember that Beech-Nut cigarettes, which I have also always known to be a product of the Lorillard Co., were first put into my store in the Fall of 1921, and that at that time there was an introductory campaign on these cigarettes in progress. I remember that at the same time we put Beech-Nut cigarettes on sale, advertising matter such as posters and window displays were exhibited in all of our stores, being placed there by Lorillard salesmen who were taking part in the introductory campaign. I had a good deal of conversation at this time with salesmen of the Lorillard Co. relative to the Beech-Nut cigarette and nothing was ever said which I could construe as indicating there was any connection between the Beech-Nut cigarette and Beech-Nut chewing gum. 264

Beech-Nut chewing gum has been sold in my stores for a number of years and I have never heard any remarks among my customers or others to the effect, or which would lead me to believe, that they thought the Beech-Nut tobacco or the Beech-Nut cigarette to be the products of the Beech-Nut Packing Company. I have never heard of a food company being in the tobacco business and I regard the two lines, that is tobacco and food products, as in separate classes altogether. I do not think that the cigarette or scrap tobacco packages resemble in appearance the Beech-Nut gum package, and I certainly would not mistake one for the other. 264

Cross Examination.

I have sold Lorillard tobacco products for many years and have known the Lorillard salesmen for a long time. I have been acquainted with Mr. Brown, the Lorillard District Salesman for Chicago, for some time. I am kept very busy helping Mr. Paulsen look after the six retail

2650 stores. We make the 534 S. Clark Street store our headquarters and I frequently wait on counter there. I do not have much time to talk to customers; not many of them ask who makes the article they are buying.

I have made no effort to remember any inquiries, remarks, or comments as to who makes the Beech-Nut Scrap tobacco or the Beech-Nut cigarettes, and had no reason to do so. When I say that I have never heard any such inquiries or remarks, I mean that I do not remember any.

Re-direct Examination.

2651 If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if L. S. JONES were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2652 My name is L. S. JONES, of legal age, and my occupation is manager of the cigar and candy departments of the Home Drug Co., of Chicago, Illinois. This company runs four drug stores, all of which are situated in the business section known as the "Loop," and one of which is at 65 W. Monroe Street. I have had this position for the past seven years and keep in constant touch with conditions in all of the stores, myself waiting on customers a great part of the time.

I have handled Beech-Nut Scrap Tobacco for several years. It is my best selling scrap tobacco. I have

handled Beech-Nut cigarettes since they were put on this market in the Fall of 1921, and have always known that both the Scrap Tobacco and the Cigarettes are the product of P. Lorillard Co. I remember that the salesman who first sold me Beech-Nut Cigarettes represented himself to be an agent of the Lorillard Co. and urged me to put these cigarettes on display in all of my stores. He had a supply of the cigarettes with him at the time and also advertising matter consisting of posters advertising the Beech-Nut Cigarette, some of which he put up in the store. 2653

I handle Beech-Nut Chewing Gum and Beech-Nut Mints, both of which I know to be products of the Beech-Nut Packing Company, the same concern that manufactures the Beech-Nut Peanut Butter. Gum and mints are sold at my candy counter. I regard tobacco and confections as entirely distinct classes of products and have never known of a food products company that made tobacco. I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the products of the Beech-Nut Packing Company. 2654

Cross Examination.

2655

I have handled the Lorillard tobacco products and have known the Lorillard salesmen for a long time. I am acquainted with Mr. W. H. Brown, the Lorillard district salesman for Chicago. I am kept very busy and have not much time to listen to what customers are saying.

I have made no effort to remember any remarks, inquiries, or comments as to who made the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes and whether

2656 they were made by the same company that makes the Beech-Nut Gum, and had no reason to try to remember them. When I say I never heard any, I mean I do not remember hearing any.

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2657 IT IS STIPULATED by and between the parties, through their respective counsel, that if CHARLIE FRIEDMAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2658 My name is CHARLIE FRIEDMAN, address 557 South Clark St., Chicago, Illinois, occupation, manager of retail tobacco store located just outside the business section of Chicago known as the "Loop." I have been in the retail tobacco business for sixteen years. In addition to tobacco I carry a small line of candy and chewing gum and serve about 600 customers a day. I have handled Beech-Nut Scrap Tobacco since 1915, and have always known that it was a product of the Lorillard Co., one of the oldest and largest of the tobacco companies. The Beech-Nut Scrap Tobacco has always been an excellent seller. I have handled Beech-Nut Cigarettes since they appeared on this market, in the Fall of 1921.

When I first saw them I associated them with the Beech-Nut Scrap Tobacco. The salesman who first put it into my store represented himself to be an agent of the Lorillard Co., and mentioned the Beech-Nut Scrap

Tobacco in recommending the Beech-Nut Cigarette. I have handled Beech-Nut Chewing Gum for a number of years and have always known that it was made by the Beech-Nut Packing Company, a concern which I know to be manufacturers of food products and confections. 2659

I have never seen a product of the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package. Lorillard's name is written on both the Beech-Nut Scrap Tobacco and Cigarette packages. I have never heard any remarks, comments, or inquiries among my customers or others to the effect, or which would lead me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be a product of the Beech-Nut Packing Company. I have never known a tobacco manufacturer to put out food products or confections and I do not think that the two lines have anything to do with one another. 2660

Cross Examination.

I have handled Lorillard tobacco products for many years and have known the Lorillard salesman. I know Mr. W. H. Brown, the Lorillard district salesman for Chicago. I do not remember exactly the circumstances of my first purchasing Beech-Nut Cigarettes and cannot describe them any more than I already have done. I am kept busy in my store and have not much chance to listen to what customers are saying. 2661

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2662

2 2662

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if D. H. KROPP were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

2 2663

Direct Examination.

My name is D. H. KROPP, address The Fair Store, Dearborn and Adams Sts., Chicago, Illinois. I am of legal age, and my occupation that of Ass't Manager of the Tobacco Department in the Fair Store. This store is one of the three largest department stores in the city of Chicago and is located in the section known as the "Loop."

2664

In the tobacco department alone we serve about 300 customers a day. For several years past I have handled Beech-Nut Scrap Tobacco and have always known this to be a product of the P. Lorillard Co. It is my best selling Scrap Tobacco. I have handled Beech-Nut Cigarettes since they were put on this market, in about September, 1921. The Beech-Nut Cigarette is a fair seller. I knew the salesman who first introduced the cigarette to be an agent of the Lorillard Co. I knew that the cigarette was made by that company. I had long handled their Beech-Nut Scrap Tobacco and connected the cigarette with it. Lorillard's name appears written on both the scrap tobacco package and the cigarette package. I have never heard any remarks from my customers or others to the effect, or which would

lead me to believe that they thought the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes to be made by the Beech-Nut Packing Company. 266

I regard gum and confections as in no way related to tobacco and cigarettes. In this store gum and mints are sold at the Candy Department, which is located on the other side of the store from the Tobacco Department.

Cross Examination.

I have handled Lorillard tobacco products for a good many years and have known their salesman. I have known Mr. W. H. Brown, the Lorillard district salesman for Chicago, for some time. I wait on customers a good deal of the time. I am so busy that I have not much time to talk to customers or opportunity to hear what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 266

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 266

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2668

IT IS STIPULATED by and between the parties, through their respective counsel, that if D. A. ROGOFF were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is D. A. ROGOFF, of legal age, occupation manager of the Tobacco Department in the Boston Store, which is located at State and Madison Sts., Chicago, Illinois, and is one of the largest department stores in Chicago.

2669

I have handled Beech-Nut Scrap Tobacco for a number of years and Beech-Nut Cigarettes since the Fall of 1921. I have always known that both these products were put up by the Lorillard Co., tobacco manufacturers, having known of this company and having observed its name on both the cigarette package and the scrap tobacco package. I know of the Beech-Nut Packing Company and that it manufactures in addition to various food products, such articles as mints and chewing gum. I have never heard any remarks among my customers or others to the effect, which would lead me to believe, that they thought that the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were manufactured by the Beech-Nut Packing Company.

2670

I have never known of a food concern that manufactured tobacco products, and I regard the two lines, that is, tobacco and food, as in no way related to one another.

In this store gum and mints are classed as "Confections," and are sold at the candy counter, which is located on the other side of the store from the Tobacco Department. I have never seen a product of the Beech-Nut Packing Company which looked like either a

Scrap Tobacco or a Cigarette package, and I know that Lorillard's name is written upon both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarette packages. 2671

Cross Examination.

I have been familiar with the Lorillard products for many years and have known their salesmen. I am acquainted with Mr. W. H. Brown, the Lorillard district salesman for Chicago. We have a very busy tobacco department. I wait upon customers part of the time myself. Not many customers ask me who makes the tobacco or cigarette they are buying. I am kept too busy to listen much to what they are saying. 2672

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2673

2674

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. S. WINERLACK were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2675

My name is M. S. WINERLACK. I am of legal age and am the manager of the Tobacco Department of the large department store known as J. Oppenheimer & Co., located at 47th St. and Ashland Avenue, South Side, Chicago, Illinois. I have bought and sold Beech-Nut Scrap Tobacco for about five years and it is my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market in the Fall of 1921. I have always known that both of these products were manufactured by the Lorillard Co., and I know that company to be the producer of such other well known brands as Murads, Helmars, Moguls, Egyptian Dieties, Climax Plug Tobacco, etc.

2676

I know of the Beech-Nut Packing Company and of such of their products as Peanut Butter, Ginger Ale, Chewing Gum and Mints. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which would lead me to believe, that they thought Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company.

I regard food products and gum as utterly unrelated to tobacco or cigarettes and I have never known of a food products concern which manufactured tobacco. In our store gum and mints are regarded as confections and are sold in the Candy Department, which is situated on the opposite side of the store from the Tobacco Department.

In the Tobacco Department we handle Beech-Nut Cigars, which are manufactured by some tobacco concern in Pennsylvania. 2677

Cross Examination.

I have handled Lorillard tobacco products for a good many years and have known the Lorillard salesmen. I know Mr. W. H. Brown, the Lorillard district salesman for Chicago, and have known him for some time. I have a very busy tobacco department and wait on customers myself, with the help of usually two clerks. We do a big business. I have not much time to talk to customers or to listen to what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 2678

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

2679

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2680

IT IS STIPULATED by and between the parties, through their respective counsel, that if O. H. OLSEN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2681

My name is O. H. OLSEN, and I am the manager of a general store located at 5105 S. Halsted St., South Side, Chicago, Illinois. I employ one clerk besides myself and we serve about 400 customers a day. We carry such articles as tobacco, candy, toys, razor blades, dry-goods, games, pencils, stationery, flashlights, etc.

2682

For the past seven years we have handled Beech-Nut Scrap Tobacco. We have no other scrap tobacco which sells half so well as Beech-Nut. We have also handled Beech-Nut Cigarettes since they appeared on this market, in the Fall of 1921. The cigarette is a fair seller. I have always known that both the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were made by the Lorillard Co. I know the Lorillard Co. to be one of the oldest and largest of the tobacco companies. I handle a number of their brands, such as Murad cigarettes, Moguls, Helmars, and Climax Plug Tobacco. I am always glad to handle Lorillard's products.

I have handled Beech-Nut Chewing Gum and Beech-Nut Mints for several years and have always known that these articles were put out by the Beech-Nut Packing Company. I regard tobacco and cigarettes as entirely distinct lines from gum or mints and I have never known of a food products, candy or gum concern that manufactured tobacco products. I think that anyone who could confuse confections with tobacco must be crazy. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a Scrap

Tobacco or a Cigarette package. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes to be a product of the Beech-Nut Packing Company. 2683

I sell Climax Tobacco and Climax Cleaning Preparation; Star Tobacco and Star Razor Blades; Ever Ready Flashlights and Ever Ready Razor Blades. None of these articles are manufactured by the same company.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 2684

Cross Examination.

I have handled Lorillard tobacco products and have known the Lorillard salesmen for many years. I am acquainted with Mr. W. H. Brown, Lorillard district salesman for Chicago. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 2685

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

2686

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. THOMPSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

2687

Direct Examination.

My name is A. THOMPSON. I am of legal age and am the owner and manager of a small grocery store located at 4737 S. Halsted St., South Side, Chicago, Illinois. At times I am the only clerk in this store, but at times I am assisted by one other clerk. In addition to groceries, I handle tobacco and confections and serve about 100 customers a day.

2688

I have handled Beech-Nut Scrap Tobacco for about three years. It is my best selling scrap tobacco. I also handle Beech-Nut Chewing Gum which is a very good seller. I have always known that the Beech-Nut Scrap Tobacco was made by the Lorillard Co. and that the Beech-Nut Gum was put out by the Beech-Nut Packing Company, manufacturers of food products and confections. I regard food products or gum as entirely distinct lines from tobacco and I have never known of a food concern which made tobacco products. I think that anyone who could confuse gum and tobacco must be crazy.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or

which led me to believe that they thought the Beech-Nut Scrap Tobacco to be made by the same company that manufactured Beech-Nut Chewing Gum. 2689

I handle Tip Top Bread and Tip Top Tobacco; Blue Ribbon Mayonnaise Dressing and Blue Ribbon Tacks. None of these articles are manufactured by the same company.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 2690

Cross Examination.

I have made no attempt to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco, and as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2691

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

692

IT IS STIPULATED by and between the parties, through their respective counsel, that if A CHRISTIANSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

693

My name is A. CHRISTIANSON. I am of legal age and the owner and manager of a store located at 4142 S. Halsted St., South Side, Chicago, Illinois. I employ one clerk and myself wait upon customers in the store. I handle such products as tobacco, candy, quick-lunch, playing cards, gloves, shoe strings, shoe polish, etc., and serve about 300 customers a day.

694

I have handled Beech-Nut Scrap Tobacco for the past seven years. It is by far my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market in the Fall of 1921. The cigarette is a slow seller in my store. I have always known that both of these products were manufactured by the P. Lorillard Co. I remember that the salesman who first sold me Beech-Nut Cigarettes represented himself to be an agent for the Lorillard Tobacco Co. and that he had with him in addition to his supply of cigarettes, certain advertising matter and that he put up some posters advertising the Beech-Nut Cigarette in my store. [Nothing that he said indicated to me any connection between the Beech-Nut Cigarette and the makers of the Beech-Nut Chewing Gum.

I have handled the Beech-Nut Gum for several years. It never occurred to me to connect this product with the Beech-Nut Scrap Tobacco or Beech-Nut Cigarette. I regard Gum and Tobacco as entirely separate classes of products and I have never known of a food concern or a gum manufacturer to put out any tobacco products.

I know that Lorillard's name is written on both the Scrap Tobacco and Cigarette packages. 2695

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Cigarette to be a product of the same company that manufactured the Beech-Nut Chewing Gum.

Cross Examination.

I have known of the Lorillard Tobacco Co. for a good many years. The Lorillard salesmen frequently call on my store. I do not remember exactly the circumstances of my first purchase of Beech-Nut Cigarettes and cannot describe them any more than I already have done. I do not remember which salesman it was. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 2696

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2697

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2698

IT IS STIPULATED by and between the parties, through their respective counsel, that if C. BIASETTI were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2699

My name is C. BIASETTI. I am of legal age and am the manager of a delicatessen store located at 3912 N. Ashland Ave., six miles north of the business section of Chicago known as the "Loop." In addition to groceries I carry tobacco and confectioneries. I have handled Beech-Nut Scrap Tobacco for several years and the Beech-Nut Cigarette since it appeared on this market in the Fall of 1921. I have always known that both of these articles were put out by the P. Lorillard Co. I have handled Beech-Nut Gum for some years and have known it to be a product of the Beech-Nut Packing Company, manufacturers of various food products and confections. However, I do not handle any of their products except the chewing gum.

2700

I regard food products and chewing gum as entirely separate lines of goods from tobacco or cigarettes, and I have never known of a food products company to put out any tobacco products. I think that anyone who would confuse food products or gum with tobacco or cigarettes must be crazy.

I have never seen a package manufactured by the Beech-Nut Packing Company which looked like either a Scrap Tobacco or a Cigarette package, and I know that Lorillard's name appears written on the front of both the Beech-Nut Scrap Tobacco and Beech-Nut Cigarette packages. I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought the

Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes 2701
to be the products of the Beech-Nut Packing Company.

I handle Uncle Sam Tobacco and Uncle Sam Bird Grit. These products are made by different companies. I also handle the Red Cross Spaghetti and Red Cross Bouillon Cubes. These products are made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 2702

Cross Examination.

I have known of the Lorillard Company for some years. The Lorillard salesmen frequently call in at my store. My customers do not often ask who makes a cigarette or tobacco which they are buying. I have not paid much attention to their talk about such things.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2703

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2704 IT IS STIPULATED by and between the parties, through their respective counsel, that if J. W. COREY were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2705 My name is J. W. COREY. I am of legal age and the manager of a store located at 3926 N. Ashland Avenue, Chicago, Illinois, where such articles as candy, tobacco, periodicals, stationery, collars, etc. are sold. This store is located about five miles north of the downtown section of Chicago known as the "Loop."

2706 I have handled Beech-Nut Scrap Tobacco for several years and Beech-Nut Cigarettes since they appeared on this market in the Fall of 1921. I have always known both of these articles were the product of the Lorillard Co., which company I know to be one of the largest and oldest tobacco concerns. I handle Beech-Nut Chewing Gum and Beech-Nut Mints. It has never occurred to me to connect these products with Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes. I regard the two lines as entirely separate and have never known of a food concern that put out tobacco products. I have never seen a package manufactured by the Beech-Nut Packing Company which looked like either a scrap tobacco package or a cigarette package. I would think that any man who could be confused between gum or mints and tobacco or cigarettes must be crazy.

When the cigarettes first appeared I remember hearing four or five persons inquire whether the Beech-Nut Cigarette and Beech-Nut Chewing Gum were made by the same company. I told these persons that this was not the case and that the Lorillard Co. made the cigarettes and the Beech-Nut Packing Company made the chewing gum. Although I cannot say definitely that

four or five was the number of these remarks which I heard, I can state positively that it was not many more than that. Except for these instances, I have never heard any remarks, inquiries, or comments among my customers or others to the effect that they believed the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes to be manufactured by the same concern that manufactures Beech-Nut Gum or Beech-Nut Mints. 2707

Cross Examination

I have known of the Lorillard Co. for some years. The Lorillard salesmen frequently call at my store. I have made no particular effort to remember inquiries, remarks, or comments as to who made the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes, and had no reason to do so. When I say I only heard four or five inquiries or remarks as to whether the Beech-Nut Cigarettes were made by the Beech-Nut Gum people, I mean I cannot now remember any more than that. 2708

Re-direct Examination.

If I had heard an appreciably greater number than four or five remarks, inquiries, or comments among my customers or others to the effect that they thought the Beech-Nut Cigarette and Beech-Nut Chewing Gum to be manufactured by the same concern, I think I would have remembered that fact. 2709

2710

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. HENDERICKX were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination

2711

My name is A. HENDERICKX. I am of legal age and by occupation manager of a small general store located at 4702 N. Ashland Avenue, Chicago, Illinois. This store is about six miles north of the business section of Chicago known as the "Loop." There is one other clerk employed in addition to myself. We serve about 150 customers a day and handle such lines as candy, dry-goods, tobacco, etc.

2712

I have handled Beech-Nut Scrap Tobacco for several years past and Beech-Nut Cigarettes since they appeared on this market, in the Fall of 1921. Beech-Nut Scrap Tobacco is a very good seller, but the Beech-Nut Cigarette does not sell well in this store. I have always known that both of these products were put out by the P. Lorillard Co. I remember that the salesman, who first put Beech-Nut Cigarettes into my store represented himself to be an agent of the Lorillard Co., and put up some advertising matter in the store at that time.

I handle Beech-Nut Chewing Gum and Beech-Nut Mints, made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Tobacco or Beech-Nut Cigarettes to be put out by the Beech-Nut Packing Company. I regard tobacco and food products or confections as entirely separate lines and I have never known of a food concern that

manufactured tobacco or cigarettes. I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package. I would think that any man who confused cigarettes with gum or mints must be crazy. 2713

Cross Examination.

I have handled Lorillard tobacco products for several years and the Lorillard salesmen frequently call in at my store. I do not remember exactly the circumstances the first time Beech-Nut Cigarettes were brought into my store for sale and cannot describe it any more than I already have. I do not remember who the salesman was who first came in with them. I do not pay much attention to remarks made by customers in my store. I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2714

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2715

2716

IT IS STIPULATED by and between the parties, through their respective counsel, that if MORRIS GOLD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination

2717

My name is MORRIS GOLD, I am of legal age, and the manager of the drug store located at 5005 Sheridan Road, Chicago, Illinois. This drug store is situated about seven miles north of the downtown section of Chicago known as the "Loop." I employ one clerk in addition to myself and we serve about 800 customers a day. We carry the usual varied line found in drug stores, including such articles as drugs, candies, toilet articles, tobacco, fountain pens, stationery, razors, etc.

2718

I have handled Beech-Nut Scrap Tobacco for many years past and have handled Beech-Nut Cigarettes since they appeared on this market in the Fall of 1921. I have always known that both of these products are manufactured by the P. Lorillard Co. and which concern I know to be one of the oldest and largest tobacco companies, making such brands as Murads, Helmars, Moguls, Egyptian Dieties, etc., all of which I handle in my store. I have handled Beech-Nut Chewing Gum and Beech-Nut Mints for several years. It never occurred to me to connect the Beech-Nut Scrap Tobacco or Cigarette with the Gum or Mints. I regard the two lines as in no way connected and have never known of a food concern that made tobacco products, or a tobacco concern that made food products. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be a product of the Beech-Nut Packing

Company, and I do not see how anyone could confuse tobacco with gum or candy. 2719

Cross Examination.

I have handled Lorillard tobacco products for many years and have known the Lorillard salesmen. They frequently come into my store to take my orders. I have a busy store and have not much time to talk to customers or much opportunity to hear what they are saying. I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2720

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2721

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. W. MASOR were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is M. W. MASOR. I am of legal age and the owner and manager of the drug store located at 4701

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2722 Sheridan Road, Chicago, Illinois. This store is located about seven miles north of the business section of Chicago known as the "Loop." I employ two clerks in addition to myself and we serve about 400 customers a day. Our stock consists of such varied lines as drugs, stationery, tobacco, toilet articles, confectioneries, etc.

I have handled the Beech-Nut Cigarette since it appeared on this market, in the Fall of 1921. The salesman who first put this cigarette into my store represented himself to be an agent of the Lorillard Co. and in no way indicated to me that the Beech-Nut Cigarette had any connection with the Beech-Nut Chewing Gum, which I was handling at the time and am still handling.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Cigarette was manufactured by the Beech-Nut Packing Company. I have never seen a package manufactured by the Beech-Nut Packing Company which looks like a cigarette package, and I regard tobacco and gum as entirely separate classes of goods. I think that any man who would confuse tobacco and gum must be crazy.

2724

Cross Examination.

I am familiar with the Lorillard tobacco products and know their salesmen. I do not remember exactly the circumstances of the first visit of the Lorillard man who first brought Beech-Nut Cigarettes into my store and cannot describe the incident any more in particular than I have already done. I do not remember which salesman it was who first introduced them into my store. My store is in a thickly populated apartment district and I am kept pretty busy. I have not much

time to talk to customers or opportunity to hear what they are saying. 2725

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2726

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. W. SCHREIBEL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. W. SCHREIBEL, I am of legal age and the owner and manager of a general store located at 289 Western Avenue, Blue Island, Illinois. I employ one clerk in addition to myself, and we serve about 200 customers a day. I carry such articles as glass and chinaware, tobacco, candy, stationery, novelties, sporting goods, etc. 2727

I have bought and sold Beech-Nut Scrap Tobacco since 1915 and it is my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market in the Fall of 1921. They have not sold

2728 well with me. I have always known both these articles to be the products of the P. Lorillard Co., which concern I know to be one of the oldest and largest tobacco concerns. I handle such of their brands as Climax Plug tobacco, Murad Cigarettes, Helmars, Moguls, Egyptian Dieties, etc.

I have handled Beech-Nut Chewing Gum for several years and it is a good seller. I have always known it to be the product of the Beech-Nut Packing Company, and I know that concern to be the manufacturer of food products, such as Beech-Nut Bacon and Beech-Nut Peanut Butter.

2729 I regard food products or gum as an entirely separate line from tobacco or cigarettes. I have never seen a package put out by the Beech-Nut Packing Company that looks like either a scrap tobacco package or a cigarette package. I know that Lorillard's name is written on both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package. I think that anyone who could confuse tobacco or cigarettes with gum or food products must be crazy.

I have never heard any remarks, inquiries, or comments among my customers or others, to the effect or which led me to believe that they thought that either
2730 the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be the product of the Beech-Nut Packing Company.

I have sold Velvet Tobacco and Velvet Pencils. These articles are made by different companies. I also sell Star Razor Blades and Star Tobacco; Ever Ready Flashlights and Ever Ready Razor Blades. None of these articles are manufactured by the same concern.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same,

on the ground that the same is irrelevant and immaterial. 2731

Cross Examination.

I have handled a good many Lorillard tobacco products and have known their salesmen for some years, who have frequently called at my store. Not many customers ask who makes the tobacco or cigarettes they are buying.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2732

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2733

IT IS STIPULATED by and between the parties, through their respective counsel, that if C. H. KAPPMAYER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is C. H. KAPPMAYER. I am the owner and manager of a tobacco and novelty store, located at 1702 Halsted, Street, Chicago Heights, Illinois. I handle

2734 such articles as tobacco, periodicals, stationery, candy, toilet articles, novelties, kodaks, etc. I employ two clerks in addition to myself and we serve about 2,500 customers a day.

I know of the Lorillard Co. as one of the oldest and largest tobacco concerns, and I handle such of their brands as Beech-Nut Cigarettes, Climax Plug, Beech-Nut Scrap Tobacco, Murad Cigarettes, Helmars, Egyptian Dieties, Moguls, etc. I have handled the Beech-Nut Scrap Tobacco for about seven years and it is my best selling scrap tobacco. The Beech-Nut Cigarettes I have handled since they appeared on this market in the Fall of 1921. I have always known that both of these articles were the products of the Lorillard Co.

2735 I handle Beech-Nut Chewing Gum, which is a good seller, and which I know to be the product of the Beech-Nut Packing Company, manufacturers of food products and confections. I regard food products and confections as an entirely distinct line from tobacco and cigarettes and I have never known a food products company which engaged in the tobacco business. I would think that any man who could confuse gum with either tobacco or cigarettes must be crazy. I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which would lead me to believe that they thought that the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes were manufactured by the same company that puts out the Beech-Nut Chewing Gum and Beech-Nut Food Products.

2736 I handle Star Shaving Brushes and Star Tobacco. These articles are made by different concerns. I also sell Ever Ready Flashlights and Ever Ready Razor Blades; Chesterfield Pipes and Chesterfield Cigarettes, all made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 2737

Cross Examination.

I have handled Lorillard Tobacco products and have known their salesmen for many years. I buy from them in large quantities. My store does a big business. I help wait on customers myself and have almost no time to talk to customers and little opportunity to hear what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 2738

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

2739

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2740

INDIANA WITNESSES.

IT IS STIPULATED by and between the parties, through their respective counsel, that if WM. T. VANVACTOR were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2741

My name is WM. T. VANVACTOR. I am of legal age and am manager of a retail store run by the Goodfellow Club and situated at the entrance to the United States Steel Co. at Gary, Indiana. As a rule I am the only clerk on duty in this store. I serve about 2,500 customers a day, the great mass of whom are employees in the steelworks. I handle such articles as candy, tobacco, gloves, caps, soap, etc.

2742

I have sold Beech-Nut Scrap Tobacco since about 1915, and sell on an average of 300 packages a week. I have handled Beech-Nut Cigarettes since they appeared on the market in the Fall of 1921. It is a slow seller with me. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were manufactured by the P. Lorillard Co. I know that company to be one of the largest of the tobacco concerns. I handle Beech-Nut Chewing Gum, Beech-Nut Mints and some of the Beech-Nut Candies. I have always known that this line of confections was put out by the Beech-Nut Packing Company, and that that company also manufactures certain food products, such as Bacon and Canned Food products. I regard food products and gum as an entirely distinct line from tobacco or cigarettes, and I have never heard of a food products company that manufactured tobacco. I have never seen a package put out by the Beech-Nut Packing Company which looked

like either a scrap tobacco package or a cigarette package. I think that any man who would accept the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package in place of Beech-Nut Gum must be crazy. 2743

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be manufactured by the Beech-Nut Packing Company.

Cross Examination.

I have known of the Lorillard Company and have handled their tobacco products and have known their salesmen for a long time. Their salesmen frequently come into my store to take my orders. I buy considerable quantities from them. My store is just outside the gate of the U. S. Steel Mills and I do a rush business, especially at certain hours. I am kept on the jump and have not much time to listen to conversation. I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2744 2745

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2746

IT IS STIPULATED by and between the parties, through their respective counsel, that if HARRY BERNARD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2747

My name is HARRY BERNARD. I am the manager of a large tobacco stand situated in the front part of a barber shop located at 706 Broadway, Gary Indiana. At this stand I handle in addition to tobacco and cigarettes, confections and playing cards and serve about 350 customers a day.

I have handled Beech-Nut Scrap Tobacco for several years and it is my best selling scrap tobacco. I have sold Beech-Nut Cigarettes since they appeared on this market, in the Fall of 1921, and sell an average of about 70 packages a week. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were put out by the Lorillard Tobacco Co.

I handle Beech-Nut Chewing Gum and it is a good seller. I have always known it to be a product of the Beech-Nut Packing Company.

2748

I regard gum and tobacco as entirely distinct lines and I have never heard of a gum or food products company that put out tobacco products. I do not think that either the Scrap Tobacco package or the Cigarette package look like the gum package and I would think that any one who would accept the tobacco or the cigarettes in place of gum must be crazy. I know that Lorillard's name is written on both the Scrap Tobacco package and the Cigarette package. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be manufactured by the Beech-Nut Packing Company.

Cross Examination.

2749

I have been familiar with the Lorillard tobacco products for a good many years and know the Lorillard salesmen who come into my store to take orders. I wait on the counter and am not a barber. I do a good business and as a rule have not much time to talk to customers. The customer does not often ask who makes the tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2750

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2751

IT IS STIPULATED by and between the parties, through their respective counsel, that if JAKE KURLAND were called as a witness on behalf of the P. Lorillard Co. defendant, he would testify as follows:

Direct Examination.

My name is JAKE KURLAND. I am of legal age and the owner and manager of a general store located at 3332 Michigan Avenue, Indiana Harbor, Indiana. I employ one clerk besides myself and we serve about 300 customers a day. I carry such articles as tobacco, candy,

2752 dry-goods, soap, playing cards, flashlights, toilet articles, glue, locks, key rings, etc.

I have handled Beech-Nut Scrap Tobacco for several years. It is my best selling scrap tobacco and I average about 290 packages a week. I have handled the Beech-Nut Cigarette since it appeared on this market in the Fall of 1921, and I sell on an average of 50 packages a week. I also handle Beech-Nut Chewing Gum and sell about one box of the gum a week, that is, 20 packages. I know that the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes are both products of the Lorillard Tobacco Co. and that the Beech-Nut Chewing Gum is put out by a different concern. I do not think that the gum package and the cigarette or scrap tobacco packages look alike and I think that any one who would take one for the other must be crazy.

753 I regard gum and tobacco or cigarettes as entirely separate lines and I have never known of a food products company that manufactured tobacco. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be made by the same company that manufactures the Beech-Nut Gum.

754 I sell Chesterfield Cigarettes and Chesterfield Pipes. These articles are made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled Lorillard tobacco products and know the Lorillard salesmen who come into my store to take

orders. I am kept pretty busy and have not much opportunity to hear what customers are saying. 2755

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

2756

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if C. P. BURDICK were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2757

My name is C. P. BURDICK. I am of legal age and am the owner and manager of a restaurant at Michigan Ave. and Grand Blvd., Indiana Harbor, Indiana. In front of my restaurant I have a tobacco and candy stand where I do a considerable business.

I have handled Beech-Nut Scrap Tobacco for about seven years and it is my best selling scrap. I have handled Beech-Nut Cigarettes since they appeared on this market, but it has been a slow seller with me. I

2758 have always known that both of these articles were manufactured by the P. Lorillard Co., which company I know to be one of the largest of the tobacco concerns. I also handle Beech-Nut Chewing Gum and it is a very good seller. I know the gum to be one of the products of the Beech-Nut Packing Company and I know of some of their other products, such as Bacon and Peanut Butter. I have never seen a package put out by the Beech-Nut Packing Company which looks like either a scrap tobacco package or a cigarette package. I regard food products or gum as an entirely distinct line from tobacco or cigarettes and have never known of a

2759 food concern that engaged in the tobacco business. I know that Lorillard's name is written on both the Scrap Tobacco package and the Cigarette package. I think that anyone who could confuse tobacco with gum or food products must be crazy.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect or which would lead me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be manufactured by the Beech-Nut Packing Company.

2760

Cross Examination.

I have been familiar with Lorillard tobacco products for many years and know their salesmen who come into my store to take orders. I attend the cashier's desk in my restaurant and take care of the tobacco and candy stand at the same time. A customer hardly ever asks who makes the cigarette or tobacco that he is buying.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to

whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2761

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2762

NORTH CAROLINA WITNESSES.

IT IS STIPULATED by and between the parties, through their respective counsel, that if R. A. CARTER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is R. A. CARTER, I am of legal age and am a grocer by trade. I am the owner and manager of the grocery store located at 719 N. Graham St., Charlotte, North Carolina. My store is a small one. As a rule I am the only clerk on duty there and I serve about 100 customers a day.

2763

I have handled Beech-Nut Tobacco for several years and Beech-Nut Cigarettes since they appeared on this market about a year and a half ago. I have always known that both of these products were made by the Lorillard Tobacco Co. Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes are both fairly good sellers with me.

2764 I handle Beech-Nut Chewing Gum, which is also a fair seller. I know it to be the product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the same company that manufactures the Beech-Nut Gum. I regard tobacco and cigarettes as an entirely separate line from gum or confections and I have never heard of a candy or gum concern which manufactured tobacco products.

2765 I do not think that the Scrap Tobacco package or the Cigarette package looks like the Gum package and I do not see how anyone could accept either the scrap tobacco or the cigarette package in place of the gum.

Cross Examination.

2766 I have been handling Lorillard tobacco products for a long time. I knew that the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were put out by the Lorillard Company before I ever bought them for my store. A customer hardly ever asks who makes the tobacco or cigarette that he is buying. I do not try to remember what they say to me.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and as to whether they are made by the same company that makes the Beech-Nut Gum or the other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

2767

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. M. MCGOWAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2768

My name is J. M. MCGOWAN. I am of legal age and am a clerk in the grocery store located at 903 N. Graham St., Charlotte, North Carolina. I have been a clerk in this store for three years. Since I have been here I have been handling Beech-Nut Scrap Tobacco. Beech-Nut Cigarettes were introduced into this store a little over a year ago. The Scrap Tobacco is a good seller, but the Cigarettes go very slowly. I have always known that Lorillard made both the Scrap Tobacco and the Cigarette and I know that company to be one of the foremost of the tobacco companies.

2769

I also handle Beech-Nut Peanut Butter and Beech-Nut Chewing Gum. I know these to be products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the products of the same company that manufactures the Beech-Nut Gum or the Beech-Nut Peanut Butter.

I regard tobacco and cigarettes as an entirely separate line of stuff from food products or gum, and I have

2770 never known of a food products company which put out any tobacco products. I know that Lorillard's name is written on both the Scrap Tobacco package and the Cigarette package. I do not think that either the Scrap Tobacco package or the Cigarette package looks like the Gum package and certainly it would take a crazy person to confuse the two lines.

I sell Royal Safety Pins and Royal Baking Powder; Camel Cigarettes and Camel Dates, all made by different concerns.

2771 IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

2772 I have been familiar with Lorillard tobacco products for a long time. I do not try to remember conversations which take place in my store. I have made no attempt to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette, and as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I had never heard of any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2773

IT IS STIPULATED by and between the parties, through their respective counsel, that if NORMAN A. LYNCH were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is NORMAN A. LYNCH. I am of legal age and by occupation a druggist. My store is located at 201 N. Tryon St., Charlotte, N. C. In addition to drugs I carry such lines as stationery, tobacco, candy, toilet articles, etc. I employ two clerks in addition to myself.

2774

I have handled Beech-Nut Cigarettes since they appeared on this market and have always known that they were a product of the Lorillard Tobacco Co. The salesman who first sold me these cigarettes told me that it was a Lorillard product. I know that Lorillard's name is written on the front of the package. Beech-Nut Cigarettes are a slow seller with me.

I handle Beech-Nut Chewing Gum which I know to be a product of the Beech-Nut Packing Company. It is a good seller in my store.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Cigarettes to be a product of the same company that manufactures Beech-Nut Chewing Gum.

2775

I do not think that the cigarette package and the gum package look at all alike and certainly it would take a crazy man to accept one for the other.

I regard gum and tobacco as entirely unrelated articles and I have never known of a candy or gum concern that put out any tobacco products.

2776

Cross Examination.

I wait on counter myself and as a rule am kept pretty busy. I do not pay much attention to what customers are saying unless they are making a complaint or something like that.

2777

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2778

IT IS STIPULATED by and between the parties, through their respective counsel, that if JAMES A. HENDERSON were called as a witness on behalf of the P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is JAMES A. HENDERSON. I am of legal age and by occupation a druggist. I am the manager of the largest drug store in Charlotte, N. C. located at 200 N. Tryon Street. I employ four clerks in addition to myself and serve about 2000 customers a day. There is a post office sub-station located in my store. I carry in addition to drugs such lines as candy, tobacco, stationery, toilet articles, etc.

I have handled Beech-Nut Cigarettes since they appeared on this market and have always known that they were a product of the Lorillard Tobacco Co. The salesman who first sold me these cigarettes told me that it was a Lorillard product. I know that Lorillard's name is written on the front of the package. Beech-Nut cigarettes are a slow seller with me. 2779

I handle Beech-Nut Chewing Gum. I know this to be a product of the Beech-Nut Packing Company. This gum is a good seller in my store.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the same company that manufactures Beech-Nut Chewing Gum. 2780

I do not think the cigarette package and the gum package look alike, and certainly it would take a crazy man to accept one for the other.

I regard gum and tobacco as entirely unrelated articles and I have never known of a candy or gum concern that put out any tobacco products.

Cross Examination.

I am familiar with Lorillard tobacco products. My store is a downtown corner drug store and does a big business. I am kept very busy as a rule and have not much time to talk to customers or opportunity to hear what they are saying. 2781

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I

- 2782 say that I never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

- 2783 IT IS STIPULATED by and between the parties, by the respective counsel, that if T. A. WALKER were called as a witness on behalf of the P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is T. A. WALKER. I am of legal age and am a druggist. I am the manager of a drug store located at 340 N. Tryon St. Charlotte, N. C. I employ two clerks in addition to myself and handle in addition to drugs, such lines as confections, stationery, tobacco, toilet articles, fountain pens, etc.

- 2784 I have handled Beech-Nut Cigarettes since they appeared on this market. They have been a good seller with me. The salesman who first put these cigarettes into my store told me that they were a product of the Lorillard Co. I know that Lorillard's name is written on the cigarette package.

I also handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought that the Beech-Nut Cigarettes to be a product of the Beech-Nut Packing Company.

I regard tobacco and gum as separate and distinct lines, and have never known of a candy or gum concern which put out any tobacco products. 2785

I do not think that the gum package and the cigarette package look alike and I would think that any one who would accept one for the other must be crazy.

Cross Examination.

I have a busy downtown drug store and have not much time to talk to customers or opportunity to hear what they are saying.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2786

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2787

IT IS STIPULATED by and between the parties, through their respective counsel, that if H. C. CHANDLER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is H. C. CHANDLER. I am of legal age and am the manager of the Liggett Store, which is

2788 located at the corner of North Tryon St. and East Trade St., Charlotte, N. C. I employ about eight clerks in my store and I do a big business in those articles which are usually carried in drug stores, confectionery stores, and tobacco stores.

I have long known of the Lorillard Tobacco Co. as one of the foremost of the tobacco companies. I have handled a large number of their brands and I am always glad to put Lorillard products into my stock. I have handled Beech-Nut Cigarettes since they appeared on this market something over a year ago and they have been a fairly good seller with me. I have carried Beech-Nut Scrap Tobacco for several years past, but only kept a small quantity of it on hand, as I do not have much demand for Scrap Tobacco among my trade. I have always known that both the Beech-Nut Cigarettes and the Beech-Nut Scrap Tobacco, were products of the Lorillard Co. I know that Lorillard's name is written on both the Scrap Tobacco and the Cigarette Packages, The salesman who sold me these articles represented himself to be an agent of the Lorillard Co.

I handle Beech-Nut Chewing Gum, which is a very good seller and I know this to be a product of the Beech-Nut Packing Company.

2790 I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought that either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be a product of the Beech-Nut Packing Company. I have never known of a food products concern that made tobacco products and I regard gum and tobacco as entirely distinct classes of goods.

I sell the following articles which bear the same name, but are made by different concerns: Black and White Cigarettes—Black and White Cosmetics; Ideal Chocolate—Waterman's Ideal Fountain Pens.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 2791

Cross Examination.

I have bought and sold Lorillard tobacco products and have known the Lorillard salesmen for a long time. I do not remember the circumstances of the first visit of the salesman who brought in Beech-Nut Cigarettes. I do not remember which salesman it was but he told me that he was from the Lorillard Co. My store is a very busy place. I wait on counter part of the time in whatever part of the store I may be needed. I have not much time to talk to customers or opportunity to hear what they are saying. 2792

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2793

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

P 2794

IT IS STIPULATED by and between the parties, through their respective counsel, that if JOHN GROSS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

P 2795

My name is JOHN GROSS. I am of legal age and am the manager of the Piedmont Cigar Stand which is located in the Piedmont Hotel, Charlotte, N. C. I employ one clerk besides myself and we serve about 1500 people a day.

I have handled Beech-Nut Scrap Tobacco for the past two or three years. It is a good seller with me. I have handled Beech-Nut Cigarettes for some time after they appeared on this market, but as it was never a good seller at my stand I have discontinued handling it. I have always known that the Lorillard Tobacco Co. made both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes. I know that Lorillard's name is written on both the Beech-Nut Tobacco and the Beech-Nut Cigarette packages. The tobacco salesman who first sold me these products told me that they were products of the Lorillard Co.

P 2796

I handle Beech-Nut Chewing Gum and it is a very good seller. I know it to be the product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be a product of the same company that manufactured Beech-Nut Gum.

I regard gum and tobacco as entirely distinct lines and I do not think that either the scrap tobacco pack-

age or the cigarette package looks like the gum package. 2797

Cross Examination.

I have been familiar with Lorillard tobacco products for many years. The Lorillard salesmen call regularly to take my orders. I do not remember who the salesmen were who first introduced the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes to my stand. I have a busy hotel stand.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2798

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed upon my memory. 2799

IT IS STIPULATED by and between the parties, through their respective counsel, that if D. W. HOLBROOK were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is D. W. HOLBROOK. I am of legal age and am the manager of the "H & H" Cigar Company,

2800 located at 32 S. Tryon St., Charlotte, N. C. I handle tobacco, candy, gum, magazines, pencils, etc. I employ one clerk in addition to myself and serve about 1000 customers a day. I have been in this business for the past four years and for the five years preceding that I worked in a tobacco jobbing house.

I have handled Beech-Nut Scrap Tobacco for several years and the Beech-Nut Cigarette since it appeared on this market. Beech-Nut Scrap Tobacco is my best selling scrap, but Beech-Nut Cigarettes are a slow seller with me. I have always known that both of these products were made by the Lorillard Tobacco Co. and I 2801 have long known of that company as one of the foremost tobacco companies.

I also handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought that the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be products of the Beech-Nut Packing Company. I have never heard of a food products or gum concern that manufactured tobacco articles.

I do not think that either the scrap tobacco package 2802 or the cigarette package looks like the Beech-Nut Gum package and I think that only a crazy man would accept either the scrap tobacco or the cigarette for the gum. I know that Lorillard's name is written on the front of both the scrap tobacco and the cigarette packages.

Cross Examination.

I have been in the tobacco business a good many years and have known of the Lorillard tobacco products during that time. I know the Lorillard salesmen who call

regularly to take my orders. I have a busy store and am kept on the jump waiting on customers most of the time. I have not much time to listen to what customers are saying. They almost never ask who makes the tobacco or cigarette which they are buying. 2803

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2804

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if DEAN S. HOUSE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows: 2805

Direct Examination.

My name is DEAN S. HOUSE. I am of legal age and am the manager of a tobacco and confectionery store located at Church and Trade Street, Charlotte, N. C. In addition to tobacco and confections I carry such articles as razor blades, pencils, pens playing cards, etc., and also serve a quick lunch. I have about 1500 customers a day and employ two clerks in addition to myself.

2806 - I have handled Beech-Nut Scrap Tobacco for several years. My average sale is about four dozen packages a week. I have handled Beech-Nut Cigarettes since they appeared on this market, more than a year ago. They are a slow seller with me. I have always known that the Beech-Nut Tobacco and Beech-Nut Cigarettes are made by the Lorillard Co.

I handle Beech-Nut Chewing Gum and it is my best selling gum. This gum I know to be a product of the Beech-Nut Packing Company.

2807 I have never heard any remarks, inquiries or comments among my customers or others, to the effect or which would lead me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be a product of the Beech-Nut Packing Company. I have never heard of a food products concern which manufactures tobacco products and I regard the two lines as absolutely separate and distinct.

I do not think that either the Beech-Nut Scrap Tobacco Package or the Beech-Nut Cigarette Package looks like the Beech-Nut Gum Package. I know that Lorillard's name is written on both the Scrap Tobacco Package and the Cigarette Package.

2808 Certainly it would take a crazy man to accept the tobacco or cigarettes for the chewing gum.

Cross Examination.

I have handled tobacco for a long time and have known the Lorillard tobacco products for years. I know the Lorillard salesmen, who call regularly at my store to take orders. I am kept pretty busy attending the different parts of my store. I do not pay much attention to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut

Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2809

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2810

IT IS STIPULATED by and between the parties, through their respective counsel, that if C. W. KIRBY were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is C. W. KIRBY. I am of legal age and am the owner and manager of the A. L. Kirby Grocery Co., of Winston-Salem, N. C. My store is located in the business section of the town. In addition to a complete grocery line I carry dry goods, tobacco, pencils, etc. I serve about 300 customers a day and employ one clerk in addition to myself.

2811

I handle Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes. I have always known that both of these articles were put out by the Lorillard Co., and I have known of the Lorillard Co. a long time as one of the largest and best known of the tobacco companies.

I also handle Beech-Nut Chewing Gum, but do not handle any Beech-Nut Food Products. I know that

2812 these are the products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be made by the same company (that manufactured Beech-Nut Gum. I do not regard gum and tobacco or cigarettes as in any way related to one another and I have never heard of any chewing gum or candy concern that made tobacco products. I do not think that the Beech-Nut Cigarette package or the Beech-Nut Scrap Tobacco package looks like the Beech-Nut Gum package. I would think that anyone who would accept either the scrap tobacco or the cigarette package in place of the gum must be crazy.

I sell Star Hams and Star Soap. These two articles are made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

2814 *Cross Examination.*

I have handled tobacco a long time and know the Lorillard products. It keeps me pretty busy waiting on the different parts of my store. I do not pay much attention to what people are saying about tobacco. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say

that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2815

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if H. L. GRANT were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows: 2816

Direct Examination.

My name is H. L. GRANT. I am of legal age and am the manager of two cigar stands, one of which is located in the lobby of the Zinzendorf Hotel, and the other in the lobby of the Robt. E. Lee Hotel, both in Winston Salem, N. C. I divide my time about equally between the two stands. At each of them we serve about 200 customers a day.

I have handled Beech-Nut Scrap Tobacco for several years and the Beech-Nut Cigarette since it appeared on this market. Beech-Nut Scrap Tobacco is my best selling scrap, but the Cigarette is a very slow seller with me. I have always known that Lorillard made both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarette. 2817

I handle Beech-Nut Chewing Gum and it is a very good seller. I know it to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-

2818 Nut Cigarette or the Beech-Nut Scrap Tobacco to be the product of the same company that manufactured Beech-Nut Gum. I regard gum and tobacco or cigarettes entirely different classes of products and I have never known of a food products, candy or gum concern that manufactured tobacco. I do not think that either the scrap tobacco package or the cigarette package looks like the gum package and I do not see how anyone could confuse the two lines. For my part I would rather handle tobacco from a company that made tobacco only than from a concern that was in the food products business as well.

2819

Cross Examination.

I have handled tobacco for a good many years and know the different brands. I am kept pretty busy looking after my two hotel stands and do not pay a great deal of attention to what people are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying.

2820

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2821

IT IS STIPULATED by and between the parties, through their respective counsel, that if I. H. RIDER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is I. H. RIDER. I am of legal age and am a druggist. I manage the Zinzendorf Pharmacy, which is in the Zinzendorf Hotel Building, Winston Salem, N. C. My store is in the center of the downtown section of Winston Salem and I have about 400 customers a day, employing two clerks in addition to myself.

2822

I have handled Beech-Nut Cigarettes for more than a year now and I sell about 20 packages a week. I have always known that the Beech-Nut Cigarettes were made by the Lorillard Co., and I know of the Lorillard Co. as one of the most prominent of the tobacco companies.

I also handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company. It is my best selling gum.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Cigarettes to be a product of the Beech-Nut Packing Company.

2823

I do not think that the gum package and the cigarette package look like each other and I think that any one who would accept one for the other must be crazy. I know that Lorillard's name is written on the front of the cigarette package.

Tobacco and gum are entirely separate classes and I have never heard of a food products company that manufactured tobacco products or a tobacco company that manufactured food products or confections.

2824

Cross Examination.

I have handled tobacco for a number of years and know the different brands. I have a busy hotel drug store and have a good deal to do to look after the different parts of it. I never pay much attention to what is said at the tobacco stand.

2825

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2826

IT IS STIPULATED by and between the parties, through their respective counsel, that if ALLISON JAMES were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is ALLISON JAMES. I am of legal age and am the manager of three drug stores, all located in Winston Salem, N. C. One of these stores is in the downtown section of Winston Salem and is known as "Owen's Drug Co." The other two stores are known as the "Thompson Drug Co." and the "Crescent Drug Co."

I have handled Beech-Nut Cigarettes for a little over a year past. I have always known that this cigarette was a product of the Lorillard Co. and I have always known of the Lorillard Co. as one of the largest tobacco concerns. I handle a number of their brands, such as Murads, Moguls, Egyptian Dieties, etc.

2827

I carry Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Ginger Ale. I have always known these products to be made by the Beech-Nut Packing Company and I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I do not think that the Beech-Nut Gum package looks like the Beech-Nut Cigarette package, and I think it would take a crazy man to confuse gum with tobacco.

2828

I sell Mavis Candy and Mavis Talcum Powder. These two articles are made by different companies. I also sell Ever-Ready Matches and Ever-Ready Razor Blades; Velvet Pencils and Velvet Tobacco. None of these articles are made by the same company.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

2829

Cross Examination.

I have handled tobacco for some years and know the different brands. I spend most of my time in our downtown store which is on the central square of the town and does a good business. I wait on counter in the downtown store for part of the time and give my

2830 attention to all parts of the store. I have not paid much attention to what is being said at the tobacco stand.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2831

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if F. A. SMITHDEAL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

2832

Direct Examination.

My name is F. A. SMITHDEAL. I am of legal age and am the manager of a grocery store located at 438 Trade Street, Winston Salem, N. C. This store is in the business section and is known as the "Basketeria." I serve approximately 700 customers a day and employ four clerks in addition to myself.

I handle a full line of the Beech-Nut Packing Company's food products and I may say that it is my leading line of food products.

I handle Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes and I have always known that both of these products were made by the Lorillard Co. I also handle Beech-Nut Stogies, which I know to be made by some Tobacco Company located somewhere in Pennsylvania, and which I know is not the Lorillard Co. 2832

I have never heard any remarks, inquiries or comments among my customers or others, to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be products of the Beech-Nut Packing Company. I regard tobacco and cigarettes as entirely separate classes of products from food products or confections. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco package or a cigarette package and I do not see how anyone could confuse tobacco or cigarettes with chewing gum or confections and food products. I would prefer to handle tobacco made by a straight tobacco concern rather than tobacco produced by a food concern that was also in the tobacco business. 2834

With me Beech-Nut Scrap Tobacco is a good seller and Beech-Nut cigarettes sell fairly well. As I have already stated, Beech-Nut Food Products and Beech-Nut Chewing Gum sell well in my store. 2835

Cross Examination.

I have a busy "Basketeria" Grocery. The tobacco and cigar stand is alongside the cashier's desk. My store covers considerable area and I look after all parts of it. It keeps me pretty busy and I have not much chance to hear what is being said at the tobacco stand and never paid much attention to that. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap

336 Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

I do wait on the tobacco counter myself at times, but most of my time is spent in a general supervision of the store.

337 If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if E. W. HANRON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

338 My name is E. W. HANRON. I am of legal age and am a druggist and have for 15 years past been a druggist. I own the drug store situated at 4th and Liberty Streets, which is one of the oldest and largest drug stores in Winston Salem, serving about 1200 customers a day. I employ four clerks in addition to myself.

I handle Lorillard's Beech-Nut Cigarettes as well as a number of other of Lorillard's brands. I sell about 50 packages of Beech-Nut Cigarettes per month. I have always known that the cigarette was made by the Lorillard Co.

I handle Beech-Nut Chewing Gum and have always known it to be a product of the Beech-Nut Packing Company. I sell about 30 boxes of the gum in a month. I have never heard any comments, remarks or inquiries among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Cigarette to be a product of the Beech-Nut Packing Company. I do not think that the cigarette package and gum package look alike. I think it would take a crazy man to accept one in place of the other. 2839

I regard tobacco and gum as entirely separate lines. For my part I would prefer a tobacco product made by a well known straight tobacco company, like Lorillard, than by a company which produced food products as well as tobacco. 2840

I sell Mavis Candy and Mavis Talcum Powder. These articles are made by different concerns.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

2841

I have handled tobacco for some years and handle a good deal of it now, including Lorillard brands, and am familiar with the different brands. I have a good sized and busy store. I wait on customers in all parts of the store myself, including the tobacco stand. I do not pay much attention to what is being said at the tobacco stand.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes or as to whether they are made by the same

2842 company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2843

IT IS STIPULATED by and between the parties, through their respective counsel, that if E. I. FATER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2844

My name is E. I. FATER. I am of legal age and am part owner and manager of the D. H. Fater Cigar Co. The D. H. Fater Cigar Co. operates a retail tobacco and novelty store located at No. 6 Haywood St., Asheville, N. C. Besides myself there is, as a rule, one clerk on duty there. We sell such articles as tobacco, stationery, confections, toilet articles, pens and pencils, novelties, playing cards, periodicals, flashlights, etc. We serve about 500 customers a day.

I have handled Beech-Nut Scrap Tobacco for about five years and Beech-Nut Cigarettes since they appeared on this market about two years ago. I have always known that both of these articles were manufactured by the Lorillard Tobacco Co. I have always known of that Company as one of the oldest and largest tobacco companies and I handle a number of their

brands, such as Climax Plug, Havana Blossom Chewing Tobacco, Murad Cigarettes, Helmars, Moguls, Egyptian Deities, etc.

2845

I handle Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Candy. I have always known these articles to be put out by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others, to the effect, or which led me to believe that they thought the Beech-Nut Cigarette or Beech-Nut Scrap Tobacco to be products of the Beech-Nut Packing Company. I know that Lorillard's name is written on the front of both the Scrap Tobacco package and the Cigarette package.

2846

I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco package or a cigarette package. I would think that any one who would accept a package of Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes in place of Beech-Nut Gum must be crazy.

I have never known of a food, candy or gum concern that manufactured any tobacco products and I regard confections and tobacco as entirely unrelated classes of goods.

I handle Pall Mall Cigarettes and Pall Mall Candy. These articles are not manufactured by the same company.

2847

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

1848

Cross Examination.

I have been in the tobacco business for some years and am familiar with the different brands. I have handled many of the Lorillard tobacco products and know the Lorillard salesmen who come into my store to take orders. A customer hardly ever asks who makes the cigarette or tobacco he is buying. I do not pay much attention to what customers are saying.

1849

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

1850

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

It is STIPULATED by and between the parties, through their respective counsel, that if E. S. GULYEAR were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is E. S. GULYEAR. I am of legal age and am the owner and manager of a general store located on the ground floor of the Gladstone Building, Depot St., Asheville, N. C. My store is just across the street

from the railway station. As a rule I have one clerk on duty here in addition to myself and we serve about 300 customers a day. I handle such articles as soap, towels, overalls, bats, tops, tobacco, soft drinks, stationery, chewing gum, watch fobs, suit cases, shoes, shots and shells, etc. 2851

I have handled Beech-Nut Scrap Tobacco for about five years and it is my best selling scrap tobacco. I have sold Beech-Nut Cigarettes since they appeared on this market, somewhere around two years ago. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarette were manufactured by the Lorillard Tobacco Co. I remember that the salesman who first sold me Beech-Nut Cigarettes had advertising matter with him at the time and that he put up some posters advertising the cigarettes in my store. 2852

I handle Beech-Nut Chewing Gum and Beech-Nut Mints, which I have always known to be products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others, to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be products of the Beech-Nut Packing Company.

I have never known of a candy or gum concern which manufactured any tobacco products and I do not regard tobacco or cigarettes as in any way related to gum or candy. I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package. I know that Lorillard's name is written on the front of the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package. 2853

2854

Cross Examination.

I have handled tobacco for some years and am familiar with the different brands. I wait on customers in all parts of my store as well as the tobacco section. I do not pay much attention to what customers are saying at the tobacco stand.

2855

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or the other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2856

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. E. PARTHEMAS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is M. E. PARTHEMAS. I am of legal age and am the manager of a store at 404 Depot St., Asheville, N. C. My store is located directly across the street from the railway station. As a rule I have one clerk on duty here in addition to myself and we serve about 400 customers a day. We handle fruit, confections and tobacco.

I have sold Beech-Nut Scrap Tobacco for about five years and Beech-Nut Cigarettes since they first appeared on this market about a year and a half ago. I have always known that both of these products were manufactured by the P. Lorillard Co. I remember that the salesman who first sold me the Cigarettes told me that he was a representative of the Lorillard Co. and that he put up some posters advertising the cigarette in my store. I know that Lorillard's name is written on the front of both the Scrap Tobacco package and the Cigarette package. 2857

I handle Beech-Nut Chewing Gum and Beech-Nut Mints. 2858

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes to be manufactured by the same concern that manufactures Beech-Nut Gum and Beech-Nut Mints.

I have never heard of a food, candy or beverage concern that manufactured any tobacco products and I regard tobacco and cigarettes as in an entirely separate class from any of these articles.

I do not think that the Scrap Tobacco package or the Cigarette package look like the Beech-Nut Chewing Gum package. I think that anyone who would accept the gum package for either the scrap tobacco or the cigarette packages must be crazy. Beech-Nut Scrap Tobacco is my best selling scrap. The Beech-Nut Cigarette is a slow seller with me. Beech-Nut Chewing Gum is a good seller with me, but the Beech-Nut Mints and Ginger Ale sell slowly with me. 2859

Cross Examination.

I have handled tobacco for some years and know the different brands. I have handled Lorillard brands and

960 know the Lorillard salesman who calls at my store on his rounds. I do not pay much attention to what my customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or the other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

961 *Re-direct Examination.*

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if JOHN H. MONTEATH were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

962 *Direct Examination.*

My name is JOHN H. MONTEATH. I am of legal age and am the manager of a grocery, confectionery and tobacco store located at 13½ College St., Asheville, N. C. My home address is 29 Blanton St., Asheville, N. C.

I have handled Beech-Nut Scrap Tobacco for four or five years and it has been my best selling scrap tobacco. I have handled Beech-Nut Cigarettes ever since they appeared on this market. They have been a slow seller with me. I have always known that both of these pro-

ducts were manufactured by the Lorillard Tobacco Co. I remember that the salesman who first sold me Beech-Nut Cigarettes told me that they were a product of the Lorillard Co. and that he put up some advertising matter advertising the cigarette in my store at that time. I know that Lorillard's name is written on the front of both the Serap Tobacco package and the Cigarette package. I have long known of the Lorillard Co. as one of the oldest and largest of the tobacco companies. I handle several of their brands, such as Havana Blossom Chewing Tobacco, Climax Plug Tobacco, Murad Cigarettes, Helmars, Moguls, Egyptian Dieties, etc. 2863

I handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company. 2864

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Serap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a cigarette package or a serap tobacco package. I think that anyone who would accept the Beech-Nut Gum package for either the Beech-Nut Serap Tobacco or Cigarette package must be crazy. I have never known of a candy concern that put out tobacco products and I regard candy and gum as in no way related to tobacco or cigarettes. 2865

I handle Star Soap and Star Tobacco. It never occurred to me that these two products might be made by the same company and I know that this is not the case.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

2866

Cross Examination.

I have handled tobacco for some years and know the different brands. I am familiar with the Lorillard brands. I cannot remember exactly the circumstances of the first visit of the salesman who introduced Beech-Nut Cigarettes to my store and cannot describe it any more than I already have done. I cannot remember who the salesman was who first sold them to me. I do not pay much attention to what my customers are saying about tobacco.

2867

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

2868

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if L. J. WILSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination:

My name is L. J. WILSON. I am of legal age and am the manager of Teagues Drug Store at 33 Patton Ave., Asheville, N. C. In addition to drugs we handle such

articles as tobacco, toilet articles, stationery, candy and chewing gum. I employ two clerks in addition to myself. 2869

I have handled Beech-Nut Scrap Tobacco for several years and Beech-Nut Cigarettes since they appeared on this market. They are both fairly good sellers with me. I have always known that the Lorillard Co. made both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes. I know the Lorillard Tobacco Co. to be one of the oldest and largest of the tobacco companies. I handle a great many of their brands, such as Helmars, Murads, Moguls, Egyptian Dieties, etc.

We serve about 800 customers a day in this store. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the BeechNut Company. 2870

I handle Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Candy and have always known that these articles were put out by the Beech-Nut Packing Company.

I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco package or a cigarette package. I have never known of a food or candy concern that manufactured any tobacco products, and I regard gum or candy as in an entirely different class from tobacco or cigarettes. 2871

I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package.

I sell Every-Ready Flashlights and Ever-Ready Razor Blades and Every-Ready Matches. None of these articles are manufactured by the same concern.

2872 IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination:

2873 I have handled tobacco for some years and know the different brands. I have handled Lorillard tobacco products and am familiar with their brands. I wait on customers in the different parts of my drug store, including the tobacco stand. I have not much time to listen to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination:

2874 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

287

IT IS STIPULATED by and between the parties, through their respective counsel, that if FRED HESTER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination:

My name is FRED HESTER. I am of legal age and am the manager of the Aiken & Hester Drug Co., at 12 Broadway, Asheville, N. C. In addition to drugs we carry such articles as candy, jewelry, tobacco, hair nets, stationery, flashlights, toilet articles, etc. I employ two clerks besides myself and we serve about 500 customers a day.

287

I have handled Beech-Nut Cigarettes since they appeared on this market, about a year and a half ago. I have always known that Lorillard made this cigarette and I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought the Beech-Nut Cigarette to be a product of the Beech-Nut Packing Company.

I handle Beech-Nut Gum and Beech-Nut Mints and I have always known that these were products of the Beech-Nut Packing Company.

287

I have never known of a food products concern that put out any tobacco products and I regard tobacco and gum as entirely separate classes of products.

I have never seen a package put out by the Beech-Nut Packing Company which looked like a cigarette package, and I think that anyone who would accept the Beech-Nut Cigarette Package for the Beech-Nut Gum package, must be crazy. I know that Lorillard's name is written on the front of the cigarette package.

I remember that when I first put Beech-Nut Cigarettes into stock there was a drive on, introducing

2878 them into this market, and that a Lorillard salesman took my first order for them. He requested that I allow him to display posters advertising the cigarette in my store, and I allowed him to do so.

Cross Examination.

2879 I have handled tobacco for some years and know the different brands. I know the Lorillard salesmen who call at my store to take orders. I cannot remember who the salesman was who first brought Beech-Nut Cigarettes into my store. I wait on customers in all parts of my store. I do not pay much attention to what the customers are saying around the tobacco stand.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

2880 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

SOUTH CAROLINA WITNESSES.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. R. SHEDD were called as a witness on behalf of the P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is J. R. SHEDD. I am of legal age and am a clerk at the tobacco and confection counter in Wingfield's Drug Store, which is located at 1443 Main Street, Columbia, S. C. This is the largest drug store in Columbia and in addition to drugs, sodas, candy and tobacco, we carry a varied line, including such things as toilet articles, fountain pens, stationery, etc. In the tobacco and candy department alone I average more than 500 customers a day.

2882

I have handled Beech-Nut Scrap Tobacco for over a year and it is the only scrap that I carry. It sells very well. I remember that the salesman who first sold me Beech-Nut Tobacco introduced himself to me as a Lorillard agent. He neither said or did anything which left me under the impression that there was any connection between Beech-Nut Tobacco and the Beech-Nut Packing Company. I put Beech-Nut Cigarettes on sale in my store when they were first introduced into this territory and I remember that on that occasion also, the salesman who sold them to me stated that he was from the Lorillard Tobacco Co., and told me that the cigarette was a new addition to their line of products. Beech-Nut Cigarettes were never a good seller in my store.

2883

I handle Beech-Nut Gum, Beech-Nut Mints, Beech-Nut Lime Drops and Beech-Nut Caramels. The gum is a very good seller. I have always known that these products were made by the Beech-Nut Packing Company.

884 I never knew the Beech-Nut Packing Company to put
2 out a tobacco product and I have never heard any re-
marks, inquiries or comments among my customers or
others to the effect, or which led me to believe that they
thought that the Beech-Nut Scrap Tobacco or the Beech-
Nut Cigarette to be a product of the Beech-Nut Packing
Company. I regard tobacco and gum or candy in
entirely distinct classes. I have never seen a package
put up by the Beech-Nut Packing Company that looked
like a cigarette or a scrap tobacco package. I would
think that anyone who would accept a package of Beech-
Nut Scrap Tobacco or Beech-Nut Cigarettes in place
885 of Beech-Nut Gum must be crazy.

Cross Examination.

I have handled tobacco for some years and know the
different brands. I know the Lorillard salesman who
calls in at our store to take orders. I cannot remember
who the salesman was who first sold me Beech-Nut
Scrap Tobacco, or the salesman who first sold me Beech-
Nut Cigarettes. I cannot remember the circumstances
of the first visit of either of these salesmen and cannot
describe what took place at the time of these visits any
more than I have already done. The Wingfield Drug
886 Store is a good sized store and does a good business.
I am kept pretty busy in my section and have not much
time to talk to customers. I do not pay much attention
to what they are saying.

I have made no effort to remember any inquiries,
comments or remarks as to who makes the Beech-Nut
Scrap Tobacco or the Beech-Nut Cigarettes, or as to
whether they are made by the same company that makes
the Beech-Nut Gum or other Beech-Nut Packing Com-
pany products, and I had no reason to do so. When I
say that I have never heard any such inquiries, com-
ments or remarks, I mean that I do not remember any.

Re-direct Examination.

2887

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if SAM CARNAGGIO were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2888

My name is SAM CARNAGGIO. I am of legal age and am the owner and manager of a grocery store located at 1810 Main St., Columbia, S. C. My store is a small one, but we do a good business and as a rule I have one clerk on duty in addition to myself.

I have handled Beech-Nut Scrap Tobacco for about a year. The salesman who first put the Scrap Tobacco into my store introduced himself to me as a representative of the P. Lorillard Co. He told me the Scrap Tobacco was one of Lorillard's brands, and said nothing which left me under the impression that the Beech-Nut Scrap Tobacco was a product of the Beech-Nut Packing Company. I was then and still am handling a number of the products of the Beech-Nut Packing Company, such as Beech-Nut Gum, Beech-Nut Peanut Butter and Beech-Nut Ginger Ale. I have never heard any comments, inquiries or remarks among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company.

2889

I have never heard of a food products concern which

2890 put out any tobacco products and I regard tobacco or food and gum as bearing no relation to one another.

I have never seen a package put up by the Beech-Nut Packing Company that looked like a scrap tobacco package. I know that Lorillard's name is written on the front of the Beech-Nut Scrap Tobacco package.

Cross Examination.

2891 I cannot remember who the salesman was who first introduced Beech-Nut Scrap Tobacco to my store. I cannot remember exactly the circumstances of his first visit when he offered to sell me Beech-Nut Scrap Tobacco and cannot describe that visit any more than I already have done. I wait on all parts of my store. I have not paid much attention to what my customers are saying about tobacco.

2892 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. L. MOORE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is M. L. MOORE. I am of legal age and am the owner and manager of a grocery store located at 933 Main St., Columbia, S. C. My store is a small one, where I serve about 100 customers a day. I am located only one block from the Capital Cash & Carry Grocery Co. and I know Mr. Jefferson D. Hayden, who is the manager there. As a usual thing I am the only clerk on duty in my store.

I have handled Beech-Nut Scrap Tobacco for about a year and the salesman who first sold me this tobacco introduced himself to me as a representative of the Lorillard Tobacco Co. and represented the tobacco to be a product of the Lorillard Co.

He said nothing which left me under the impression or suggested to me that the Beech-Nut Tobacco might be made by the Beech-Nut Packing Company. I handle a good many of the food products put out by the Beech-Nut Packing Company. It did not occur to me that the Beech-Nut Tobacco might be the product of the Beech-Nut Packing Company. I regard tobacco as an entirely separate line from food products and I have never known of a food concern that produced tobacco.

I have never seen a package put out by the Beech-Nut Packing Company which looked like a scrap tobacco package and I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company.

2896

Cross Examination.

I do not know the salesman who first sold me the Beech-Nut Scrap Tobacco. I cannot remember exactly what this salesman said or did at that time and cannot describe his visit any more than I have already done. I have not paid much attention to what my tobacco customers are saying.

2897

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2898

IT IS STIPULATED by and between the parties, through their respective counsel, that if S. A. SABBAGHA were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is S. A. SABBAGHA. I am of legal age and am the owner and manager of a grocery store located at 727 Main Street, Columbia, S. C. My store is on the same street with the Capital Cash & Carry Grocery Co., and it is only one block away from that store. I

know Mr. Jefferson D. Hayden, who is the manager there. My store is not a very large one. I employ one clerk besides myself and serve between 100 and 150 customers a day. 2899

I have handled Beech-Nut Scrap Tobacco for about six months. I do not know the name of the salesman who first put it into my store, but I do remember that he introduced himself as a representative of the Lorillard Co. and said nothing which led me to believe that the Beech-Nut Scrap Tobacco was made by the Beech-Nut Packing Company.

I was then and still am carrying Beech-Nut Bacon, Beech-Nut Peanut Butter and Beech-Nut Ketchup. It never did occur to me that the Beech-Nut Tobacco might be made by the Beech-Nut Packing Company. I have never heard of a food products company making tobacco and I regard the two as entirely separate lines. 2900

I have never seen a package put out by the Beech-Nut Packing Company which looked like a scrap tobacco package and I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought that the Beech-Nut Tobacco was a product of the Beech-Nut Packing Company.

2901

Cross Examination.

I cannot remember any more details in regard to the visit of the salesman who first put Beech-Nut Scrap Tobacco into my store. I wait on customers in all parts of my grocery store. I do not pay much attention to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other

- 2902 Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

- 2903 IT IS STIPULATED by and between the parties, through their respective counsel, that if R. L. BURNETT were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is R. L. BURNETT. I am of legal age and by occupation a druggist. My store is located at 829 Main Street, Columbia, S. C. It is a corner store and is next door to the Capital Cash & Carry Co. I know Jefferson D. Hayden, who is the manager of that store.

- 2904 I have known of the Lorillard Tobacco Co. as one of the biggest of the tobacco companies. I handle several Lorillard brands, including Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes. Beech-Nut Scrap Tobacco is a good seller with me, but the cigarettes sell slowly. I cannot now remember who the salesman was that first put Beech-Nut Cigarettes into my store. I do remember, however, that he told me he was a Lorillard agent and when he left I knew the cigarettes to be a product of the Lorillard Co. I come into contact a great deal with Lorillard salesmen and I have never

known one of them to misrepresent any of his goods to me. 2906

I handle Beech-Nut Chewing Gum, which is a very good seller. I do not think that either the Beech-Nut Cigarette package or the Beech-Nut Serap Tobacco package looks like the gum package and I do not think that anyone would accept one for the other. I have always known myself that the tobacco was a product of the Lorillard Co., and that the gum was put out by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others, to the effect, or which led me to believe that they thought the Beech-Nu Serap Tobacco or the Beech-Nut Cigarette to be products of the Beech-Nut Packing Company. I regard tobacco and cigarettes as in entirely different classes from chewing gum. 2908

Cross Examination.

I have handled tobacco for a good many years and know the different brands, and have been familiar with the Lorillard brands for a long time. The Lorillard salesmen are frequently in my store on their rounds. My drug store is on a corner and I am kept pretty busy waiting on trade. I have not paid much attention to what customers are saying at the tobacco stand. 2909

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Serap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2908

Re-direct Examination:

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. B. TOMLINSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

2909

Direct Examination.

My name is A. B. TOMLINSON. I am of legal age. My address is 142 S. Liberty Street, Spartanburg, S. C., where I own and manage a grocery store. My store is located about three blocks from the grocery store formerly run by Robt. L. Bowen, with whom I am acquainted.

I handle a number of the products of the Beech-Nut Packing Company, such as Peanut Butter and Beans.

2910

When the Beech-Nut Cigarette was first introduced in this neighborhood about a year and a half ago, two salesmen called and asked me to put it on sale in my store. They told me that they were Lorillard Salesmen and that the Beech-Nut Cigarette was one of that company's products. They said nothing to me which left me under the impression that the cigarettes were put up by the Beech-Nut Packing Company. I bought some of the cigarettes and allowed the salesmen to sample customers in my store. I continued to sell Beech-Nut Cigarettes for several months.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-

Nut Cigarettes to be a product of the Beech-Nut Packing Company. I stopped handling the cigarette because I had very few calls for it. 2911

Cross Examination.

I cannot give the names of the two salesmen who first introduced the Beech-Nut Cigarettes in my store. I cannot describe any more in detail the circumstances of their visit than I have already done.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2912

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2913

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. F. DRAKE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is J. F. DRAKE. I am of legal age and am the proprietor of a grocery store located at 148 S. Liberty St., Spartanburg, S. C. My store is three

2914 blocks from the grocery store formerly run by Robt. L. Bowen. I have been in business here only six months but have for a number of years been engaged in the grocery business at different places. Ever since I have been in this store I have handled a number of the food products manufactured by the Beech-Nut Packing Company.

2915 About September, 1922, a man named Doyle called upon me and offered Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes for sale. He told me that he was a Lorillard salesman and made it plain that both the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were Lorillard's products. He said nothing which in any way indicated to me that there was any connection between the Beech-Nut Packing Company and Beech-Nut Scrap Tobacco and Cigarettes.

2916 I regard tobacco and food products as in entirely separate classes and I have never known of a food concern that manufactured tobacco. I did not buy any Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes and I explained to Mr. Doyle that my tobacco business was practically negligible and I did not care to increase my stock. I know, however, that both the Beech-Nut Tobacco and Beech-Nut Cigarettes are now sold in this neighborhood.

I have never heard any remarks, inquiries or comments anywhere to the effect, or which led me to believe, that people thought either the Beech-Nut Cigarette or the Beech-Nut Scrap Tobacco to be the products of the Beech-Nut Packing Company.

Cross Examination.

The visit of Mr. Doyle which I have described, when he offered to sell me Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes was not in connection with the introductory campaign on either, but was at a much

later date, but this was the first time these articles had been offered to me for sale. I cannot remember exactly what the salesman said or did at the time and cannot describe the incident any more than I have already done. I do not keep much tobacco and do not pay much attention to it. 2917

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 2918

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel that if J. J. BATES were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows: 2919

Direct Examination.

My name is J. J. BATES. I am of legal age and my occupation is that of grocer. My grocery store is located at 407 South Liberty St., Spartanburg, S. C., and is only one block from the grocery store formerly run by Robt. L. Bowen, with whom I am personally acquainted. I have been in business here for about fifteen years but have handled the grocery line for the past year only.

2920 Up until then I had carried tobacco and confections. I still handle tobacco, but my main business is in the grocery line. I carry a number of the Beech-Nut Packing Company's products, such as peanut butter, spaghetti, and bacon, as well as chewing gum.

2921 The first time I ever saw Beech-Nut Cigarettes was when two missionary men visited me at my store and wanted me to put them on sale here. They introduced themselves to me as Lorillard's men and told me that the cigarette was Lorillard's product. I allowed them to put up a cigarette poster advertising the Beech-Nut Cigarette, in front of my store, and I remember that it had Lorillard's name on it. Nothing was said which in any way indicated to me any connection with the Beech-Nut Packing Company. I did not buy any Beech-Nut Cigarettes at that time, but told the salesman that if I had any calls for them in the future I would put them in. This took place when the cigarettes were first introduced into this neighborhood, in the Fall of 1921. Several times after that tobacco salesman called to sell me the Beech-Nut Cigarettes. On all of these occasions they made it plain to me that they were representing the Lorillard Co. and never left me under the impression that the cigarettes were in any way connected with the Beech-Nut Packing Company. Having had some calls for Beech-Nut Cigarettes I put them in stock when the salesman called on me the second time and they sold well for me until such brands as Camels, Peidmonts and Chesterfields dropped in price. That was in the Fall of 1922 and I have not sold many Beech-Nut Cigarettes since.

2922 I have known of the Lorillard Company for many years as one of the oldest and largest of the tobacco concerns and I have always thought of them as as highly reputable concern. I have handled many of their products ever since I have been in business.

I have never seen a package put out by the Beech-Nut Packing Company which looked like a cigarette package, nor have I ever heard any remarks, inquiries or comments among my customers or others, to the effect or which would lead me to believe that they thought the Beech-Nut Cigarette to be a product of the Beech-Nut Packing Company. I regard tobacco and gum or food products as in entirely separate classes.

1923

Cross Examination.

I have handled tobacco for many years and am familiar with the different brands. I do not know who the two salesmen were who first came into my store offering to sell me Beech-Nut Cigarettes. I cannot remember exactly what they said or did at that time and cannot describe their visit any more than I already have done.

1924

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

1925

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2926

IT IS STIPULATED by and between the parties to the above entitled case, through their respective counsel, that if R. L. WALDROP were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2927

My name is R. L. WALDROP, and I am part owner of and buyer for the firm of Waldrop & Turner, grocers, located on Coffee St., Greenville, S. C. We do quite a large grocery business, serving 400 or 500 customers a day, and in addition to the usual line of groceries I also buy and sell some confections and tobacco. I carry a number of the products of the Beech-Nut Packing Company, such as the peanut butter, beans, spaghetti, and the like, but do not carry the Beech-Nut Gum. However, I do buy and sell in this store the Beech-Nut Scrap Tobacco, and know that we have had it on sale for a number of years past. I have always known that it is Lorillard's product since I put it in this store, for on the first occasion when I purchased it I gave the order to a tobacco salesman who told me that it was a brand of the Lorillard Co.

2928

However, it did not occur to me that a manufacturer of food products, like the Beech-Nut Packing Company, would put out tobacco products, such as Scrap Tobacco or Cigarettes. I never heard of a food concern putting out tobacco and I regard tobacco as an entirely independent business from the food, confectionery, or gum business. I have never heard any comments, remarks or inquiries which indicated to me that any of my customers connected the tobacco with the Beech-Nut Packing Company, manufacturers of Beech-Nut food products and Beech-Nut Gum, nor have I ever seen a package put out by the Packing Company which looked

like a scrap tobacco package. I know that the name Lorillard is printed on the front of the Scrap Tobacco package. So far as scrap tobaccos go, this Lorillard Beech-Nut Tobacco is a good seller.

2929

Cross Examination.

My grocery store is one of the larger grocery stores of Greenville. Both my partner, Mr. Turner, and I are in the store a greater part of the time and wait on customers in all parts of the store as needed. I am not necessarily in the store all of the time and my partner, Mr. Turner, is apt to be there when I am not, and vice versa. We handle various products of the Beech-Nut Packing Company and the Beech-Nut Packing Company, salesmen are in our store at frequent intervals. I do not pay a great deal of attention to what the customers are saying in the tobacco section.

2930

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2931

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

932

IT IS HEREBY STIPULATED by and between counsel for the parties that if C. W. RIDGWAY were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

933

My name is C. W. RIDGWAY. I am of legal age, and am buyer for the Rogers Grocery Co. located at 315 N. Main St., Greenville, S. C. In addition to groceries I buy and sell tobacco and confections, and I carry a number of the products of the Beech-Nut Packing Company, such as the Beech-Nut Gum, Peanut Butter, Canned Goods, and the like, and these products of the Beech-Nut Packing Company sell fairly well.

934

I recollect that the salesman who first offered the cigarette in this store, about the Fall of 1921, introduced himself as a Lorillard man and he said nothing to me which indicated to me that there was any connection between the Beech-Nut Cigarettes and the Beech-Nut Packing Company, manufacturers of food products and gum. I was then handling the various Beech-Nut food products and I was never under the impression, nor did it ever occur to me that the cigarettes might be put out by the same company that made the food products and the Beech-Nut Gum. I know that Lorillard's name is written on the front of the package of Beech-Nut Scrap as well as the Cigarettes. I have never heard any comments, remarks or inquiries on the part of any persons, to the effect, or which would lead me to believe that such persons thought the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were made by the Beech-Nut Packing Company.

I regard tobacco as an entirely different class from food products, gum and candies, and I personally would never connect the Beech-Nut Packing Company with the

Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes. 2935
I would think that a man was crazy who would accept one class of goods when he wanted the other.

Cross Examination.

The Rogers Grocery Co. store where I am employed is a store of some size, although not one of the largest ones. I wait on customers in all parts of the store and do not pay particular attention to what is going on in the tobacco section. I cannot remember exactly what the salesman who first offered Beech-Nut Cigarettes for sales in this store said or did during his visit and cannot describe it any more than I have already done. 2936
I do not know who the salesman was and I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2937

2938

IT IS STIPULATED by and between counsel for the respective parties, that if P. R. JAMESON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2939

2940

My name is P. R. JAMESON, of legal age, address 219 N. Main St., Greenville, S. C., and I am by occupation a druggist and a clerk in the drug store located at the above address and known as the Greenville Pharmacy. We serve about 700 customers a day and employ two other clerks besides myself. In addition to drugs we carry such articles as candy, stationery supplies, tobacco, hair nets, toilet articles, etc. We carry Beech-Nut Gum and Candies of the Beech-Nut Packing Company and also Beech-Nut Cigarettes and Scrap Tobacco of the Lorillard Co. The Beech-Nut Gum is my best selling gum and the Beech-Nut Scrap Tobacco my best selling tobacco. The Beech-Nut Cigarette is a poor seller in this store. I have always known that the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were put out by the Lorillard Co., tobacco manufacturers, having known of this company and having observed its name on both the cigarette package and scrap tobacco package. I have also always known that the gum and candies were put out by a separate concern, to-wit, The Beech-Nut Packing Company, the same people who make Beech-Nut peanut butter and other food products. I have never heard of a food product company being in the tobacco business and I regard the two lines, that is, tobacco and food products as in separate classes altogether. I have never seen a package put up by the Beech-Nut Packing Company which looks like either a scrap tobacco or a cigarette package. I would think that anyone who accepted a package of Beech-Nut Scrap

Tobacco or Beech-Nut Cigarettes in place of Beech-Nut Gum or candies must be crazy. I have never heard of any remarks, comments or inquiries from customers or others to the effect, or which would lead me to believe, that they thought that the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were made by the Beech-Nut Packing Company. As a matter of fact, I never heard any discussion about the matter at all.

2941

Cross Examination.

I wait on customers in all parts of our drug store. We are kept pretty busy. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2942

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

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IT IS STIPULATED by and between the parties, through their respective counsel, that if JOHN D. ASHMORE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

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My name is JOHN D. ASHMORE, I am of legal age, my occupation is druggist at the Armstrong Pharmacy, 301 N. Main St., Greenville, S. C., and I am the manager of this store, where we serve about 1,000 customers a day, the store being located in the business section of the city. I carry a varied line of goods, tobacco, confections, toilet articles, stationery supplies and the like. I handle Beech-Nut Gum and Beech-Nut Confections, of the Beech-Nut Packing Company, and also Beech-Nut Cigarettes and Beech-Nut Tobacco of P. Lorillard Co.

2946

I recollect that when the Beech-Nut Cigarettes were first introduced into Greenville, in the Fall of 1921, a heavy set, dark complexioned man, first offered them for sale here and asked us to put them in. He had with him small cartons of the cigarettes, each carton containing a number of individual packages, and he also had with him certain advertising matter, advertising these Beech-Nut Cigarettes, which he asked permission to put up in the store. He introduced himself as a Lorillard tobacco man and said nothing that left me under the impression that the cigarette was a product of the Beech-Nut Company, but stated that the cigarette was being put out by P. Lorillard Co. I know that both the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes are Lorillard's products and have never been under the impression that they were made by the Beech-Nut Packing Company or the manufacturer of the Beech-Nut Gum. I do not think that either the scrap tobacco

package or cigarette package look like the Beech-Nut gum package. I know that Lorillard's name is written on the front of both tobacco packages.

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I have never heard any comments, remarks or inquiries made by my customers, or anyone, to the effect, or which would lead me to believe that they were under the impression that the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were manufactured by the Beech-Nut Packing Company. So far as I am concerned, I have always known that the tobacco and cigarettes were a product of the Lorillard people and I have never been under any other impression.

2948

Cross Examination.

We have a busy downtown drug store. I wait on customers in all parts of the store. I have handled tobacco for some years and know the different brands. The Lorillard Company salesmen call on us at frequent intervals to take orders. I do not know who the salesman was who first introduced the Beech-Nut Cigarettes into our store. I cannot remember exactly what this salesman did or said at that time and cannot describe his visit any more than I already have done. I am kept busy in the store and as a rule have not much opportunity to hear what is being said by customers.

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I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

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Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between counsel for the respective parties, that if J. O. SLOMAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

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Direct Examination.

My name is J. O. SLOMAN, grocer by occupation, and my store is located at 111 W. Coffee St., Greenville, S. C. I am the buyer in this store, where we do a comparatively large business for a city of this size and employ five clerks.

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We carry certain food products of the Beech-Nut Packing Company, for example Peanut Butter, but we do not carry Beech-Nut Gum. While we carry Beech-Nut Scrap Tobacco of Lorillard Co., we do not carry the Beech-Nut Cigarette. When the Scrap Tobacco was first introduced into this store, several years ago, I bought it from a Lorillard salesman, who stated that he represented the Lorillard Co. and said nothing which led me to believe that the tobacco was a product of the Beech-Nut Packing Company, that is, the food company, and personally I am not sure that I would have believed the salesman had he made any such statement, because as a grocery buyer I have never heard of a food concern making tobacco, and I cannot see what they have to do with one another. I would regard them as entirely separate and distinct classes of goods. I know of the Lorillard Co. and know that it makes well known

brands of tobacco products, for example, Climax Tobacco. I have never heard any comments, remarks, or inquiries made by my customers, or others, to the effect or which would lead me to believe that they thought the Beech-Nut Scrap Tobacco was made by the same concern that makes the Beech-Nut food products, and, in deed, I have never heard any discussion in this respect. As I said before, I could not myself connect up tobacco with the Beech-Nut Packing Company. 2953

Cross Examination.

I have handled tobacco for some years and have bought considerable quantities from the Lorillard Co. and I have from time to time known the Lorillard salesmen who come into our store to take orders. We have one of the larger grocery stores in Greenville. I am kept pretty busy waiting on customers in all parts of the store. I do not wait particularly on customers in the tobacco section and have not a great deal of opportunity to hear what customers are saying. 2954

I have made no special effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 2955

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

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IT IS HEREBY STIPULATED by and between the parties, through their counsel, that if T. J. SAYLE was called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

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My name is T. J. SAYLE, and I am a retail merchant, having two stores, one a grocery store on Pendleton St. in West Greenville, and the other a dry goods store. These stores are next door to one another and open into one another and I run them practically as one establishment. On the grocery side I carry a general line of groceries, canned goods, and the like, as well as confections and tobacco, and I handle products of the Beech-Nut Packing Company, including canned and bottled goods and Beech-Nut Chewing Gum. I also buy and sell the Beech-Nut Cigarettes and the Beech-Nut Scrap Tobacco. I also carry clothes, umbrellas and such articles in the dry goods part of the store. This store is two blocks away from the grocery store run by a man Wm. T. Hill at 10 Mason St., West Greenville, S. C. West Greenville may be called a small town and I may say that my establishment is the leading one in the town so far as grocery and clothing concerns go. I usually employ about eight clerks and serve several hundred customers a day. I have always known that the Lorillard Co. made the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes and I have never associated or connected such tobacco and cigarettes with the Beech-Nut Packing Company, manufacturers of the gum and food products which I sell, nor have I ever heard any comments, remarks, or inquiries made by my customers or, indeed, anyone to the effect or which would indicate to me that they thought that the Beech-Nut Scrap Tobacco and

Beech-Nut Cigarettes were made by the Beech-Nut Packing Company. As a matter of fact, I regard tobacco and foods as entirely unrelated products of entirely different classes and I have never heard of any food concern that manufactured tobacco. I have never seen a product of the Beech-Nut Packing Company that looked like either the cigarette or scrap tobacco packages. I do the buying for this store and the salesman who introduced the Beech-Nut Cigarettes into my store stated that they were Lorillard Company's product and in no way represented to me or left me under the impression that there was any connection between the tobacco and cigarettes and the Beech-Nut Packing Company. I have never known a Lorillard man to mislead me in any respect. With me the Beech-Nut Packing Company's food products and gum are good sellers. The Beech-Nut Cigarette does not sell well, but the Beech-Nut Scrap Tobacco is a fast seller and is about my best seller in scrap brands.

Cross Examination.

I am the proprietor of the grocery and dry goods stores mentioned. I spend most of my time in them and wait on customers part of the time. I carry many lines of goods and am apt to be in all parts of the store. I have known of the Lorillard Co. for a long time and have handled their products. I have known the Lorillard salesmen from time to time as they come into my store to take orders. I do not remember who the salesman was who first introduced the Beech-Nut Cigarettes into my store. I cannot exactly remember what he did or said at that time and cannot describe his visit any more than I already have. I have not any more opportunity of hearing what customers are saying in the tobacco section than in any other part of my store. I have made

- 2962 no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

- 2963 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between counsel for the respective parties that if F. C. CALDER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

- 2964 My name is F. C. CALDER. I am of legal age, and my occupation is that of Manager of the Bryan-Wood Drug Co. of West Greenville, S. C. I have been in the drug business for the past twenty-five years and in business here at this place of the Bryan-Wood Drug Co. for the past fifteen years. This store is at the central corner of the town, just where the cars from Greenville stop, and one block back of me is the grocery store of Wm. T. Hill, 10 Mason St., West Greenville, S. C. The Bryan-Wood Drug Co. has a very good business for a town of this size, and will serve probably 200 customers a day. We usually have three clerks, including myself. In this store I handle, buy and sell drugs, sodas, tobacco,

stationery supplies, toilet articles, safety pins, hair nets, garters, belts, razors, gasoline and motor oil, and a variety of miscellaneous articles. I handle Beech-Nut Gum, Mints and Chewing Tobacco by the Beech-Nut Packing Company and also the Beech-Nut Cigarettes and Scrap Tobacco of the P. Lorillard Co. The gum is a good seller and both the cigarettes and scrap tobacco are fair sellers. I have always known that the Lorillard Co. made the tobacco and cigarettes and I have never heard any comments, remarks or inquiries made by my customers or others to the effect, or which would lead me to believe, that they thought the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were made by the Beech-Nut Packing Company. I do not think that the gum and other Beech-Nut confections look like a cigarette or scrap tobacco package. I think it would certainly take a crazy man to accept a package of Beech-Nut scrap tobacco or Beech-Nut cigarettes in place of Beech-Nut gum or candies. Tobacco and gum, as I see it, have nothing to do with one another. I have never heard of a food concern making tobacco. The salesman who first introduced the cigarette and tobacco into this store said that they were Lorillard men and said nothing which led me to believe that there was any connection between these tobaccos and the Beech-Nut Packing Company. As I recall it is the usual thing for the Lorillard tobacco man when he comes in to my store to say to me, in substance: "I am Lorillard's man, do you want any tobacco?" and the Beech-Nut Gum man comes in and says to me, in substance: "I am the Beech-Nut Packing man, do you want any gum or mints today?"

I have now on sale in my store Vaseline Lotion, Vaseline Pencils, Velvet Candy and used to sell Vaseline Tobacco as well. These are all made by different companies. Also, I have Red Cross Toilet Powder, Red Cross

2968 Cotton and Red Cross Castor Oil made by different companies, respectively. Again, I sell Black and White Cigarettes made by one company and Black and White Ointment, Black and White Soap, and Black and White Dental Cream, all made by another company, and I myself do not take these products to be made by the same concern merely because they have the same name.

2969 IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

2970 I have handled tobacco for many years and know the different brands. I have handled Lorillard brands for a long time and know the Lorillard salesmen who come into my store at frequent intervals to take orders. I do not remember who the salesman was who first introduced the Beech-Nut Scrap Tobacco into my store or who the salesman was who first introduced the Beech-Nut Cigarettes to me. I cannot remember exactly what either one of them said or did at the time and cannot describe those visits any more than I have already done. I look after all departments of my drug store. I have not given particular attention to the tobacco section any more than the other sections.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

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If I had heard any such remarks, inquires, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

TENNESSEE WITNESSES.

IT IS STIPULATED by and between the parties, through their respective counsel, that if ROY McDONALD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

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Direct Examination.

My name is ROY McDONALD. I am of legal age and am the manager of a chain of grocery stores, all located in Knoxville, Tennessee, and known as the "White" stores. My headquarters is at one of these stores, located at 1007 S. Gay St., Knoxville, Tennessee. My estimate of the average number of customers served at each of my stores is about 250 customers a day. I have held my present position for one year. Prior to that time I was a student.

2973

Ever since I have been managing this chain of stores, all of them have handled Beech-Nut Scrap Tobacco. It is a very good seller. I have always known that Lorillard made the Beech-Nut Scrap Tobacco. I know that Lorillard's name is written on the front of the Beech-Nut Scrap Tobacco package.

My stores also handle Beech-Nut Chewing Gum and Beech-Nut Peanut Butter.

I have never heard any remarks, inquiries, or comments among my customers, or others, to the effect or

2974 which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the same company that manufactures the Beech-Nut Chewing Gum and the Beech-Nut Peanut Butter.

I do not think that the Beech-Nut Gum package looks like a scrap tobacco package and I think that only a crazy man would accept one for the other.

I have never known of a food or gum concern which manufactured any tobacco products and I regard tobacco and cigarettes as in no way related to food products or chewing gum.

2975 *Cross Examination.*

I know the Lorillard brands of tobacco and know the Lorillard salesmen who call in at our stores. I divide my time between the different stores in our chain, but spend more of my time at 1007 S. Gay Street store than in any other. I have not a great deal of opportunity to hear what customers are saying in the tobacco section.

2976 I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

2977

IT IS STIPULATED by and between the parties, through their respective counsel, that if W. E. DOUGLAS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is W. E. DOUGLAS. I am of legal age and am the manager of a store known as "Douglas & Cobble," which is located at 31 N. Gay St., Knoxville, Tennessee, where such articles as tobacco, magazines, quick-lunch, pens, candy, key rings, etc., are sold. As a rule, I have one clerk on duty in addition to myself and we serve about 400 customers a day.

2978

I have handled Beech-Nut Cigarettes ever since they first appeared on this market, which was about a year and a half ago. I remember that the salesman who first sold me Beech-Nut Cigarettes told me that they were a product of the P. Lorillard Co. and I also remember that he put up some posters advertising these cigarettes in my store at that time.

I have handled Beech-Nut Chewing Gum for a number of years and have always known that it was made by the Beech-Nut Packing Company.

2979

When the cigarette first appeared I remember that two or three people asked me whether the Beech-Nut Cigarettes and the Beech-Nut Chewing Gum were manufactured by the same company, I cannot remember who these people were. I am sure, however, that there were only two or three of these instances. Since that time I have heard no remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Cigarette and the Beech-Nut Gum to be manufactured by the same concern. I know that Lorillard's name is written on

980 the front of the Beech-Nut Cigarette package. I have never known of a food products, candy, or gum concern that manufactured any tobacco products, nor have I ever seen a package put out by the Beech-Nut Packing Company which looked like a cigarette package. I regard gum and cigarettes as in entirely separate classes.

I sell Velvet Ice Cream and Velvet Tobacco. These articles are not manufactured by the same concerns.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on
981 the ground that the same is irrelevant and immaterial.

Cross Examination.

My store is a long and narrow room and I sell many kinds of articles and have a quick-lunch counter in the rear portion. I wait on customers in all parts of the store myself. I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Cigarettes or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had
982 no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries, or comments in appreciably greater numbers than the two or three instances which I have mentioned, I think that the same would have been impressed upon my memory and that I would now recall them.

2983

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. R. SMITH were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. R. SMITH. I am of legal age and am the manager of the Rexall Stores in Knoxville, Tennessee. My headquarters are at one of our stores which is located at 301 S. Gay St., Knoxville, Tenn. The Rexall Co. owns four stores in Knoxville, and I am buyer for all of these stores. My stores average about 1,000 customers each a day. I am constantly in one or the other of these stores and spend some of my time waiting on the trade. I may say that I am in close contact with what goes on in all of them. In addition to drugs we handle toilet articles, perfume, tobacco, candy, hair nets, stationery, pens, pencils, etc.

2984

Our stores have handled Beech-Nut Cigarettes since they appeared on this market about one and a half years ago. I have always known this article to be manufactured by the Lorillard Tobacco Co. I have long known the P. Lorillard Co. to be one of the most prominent of the tobacco companies and I am familiar with many of their brands, such as Murad Cigarettes, Moguls, Helmars, Egyptian Dieties, etc.

2985

I handle Beech-Nut Chewing Gum and Beech-Nut Mints and have always known that these products were put out by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments from my clerks, customers, or others to the effect or which led me to believe that they thought the Beech-Nut Cigarette to be a product of the Beech-Nut Packing Company. I know that Lorillard's name is written

2986 on the front of the Beech-Nut Cigarette package. I have never known of a candy or gum concern to put out any tobacco products and I regard confections and tobacco as entirely unrelated classes of products. I have never seen a package put out by the Beech-Nut Packing Company which looked like a cigarette package. I think that anyone who would accept the Beech-Nut Gum package for the Beech-Nut Cigarette package, or vice versa must be crazy.

2987 I remember my first order for Beech-Nut Cigarettes was taken by a tobacco salesman who called upon me in my store and represented himself to be an agent of the Lorillard Co. I also remember that he had some advertising matter with him when he called and that he asked me to put some posters advertising the Beech-Nut Cigarettes on display in my store.

2988 I handle Blue Ribbon Cigarettes and Blue Ribbon Malt Extract, which articles are made by different companies. I handle Black and White Cigars and Black and White Toilet Preparations, such as cold cream and talcum powder. The cigars are manufactured by one company and the toilet preparations by another. I handle Velvet Pencils and Velvet Tobacco. These articles are not manufactured by the same concern. I sell Camel Cigarettes and Camel Cigars, made by different companies; Murad Perfume and Murad Cigarettes, made by different companies; Red Cross Tooth Ache Outfit and Red Cross Bandages, made by different companies; Mavis Candy and Mavis Talcum Powder, made by different companies; Mary Garden Candy and Mary Garden Toilet Preparations, made by different companies; Ever-Ready Flashlights and Ever-Ready Razor Blades, made by different companies; Ideal Ink, Ideal Brushes and Ideal Perfume, all made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 2989

Cross Examination.

I run four very busy Rexall drug stores. I travel about from one to the other but spend more time at the 301 S. Gay Street store than at any of the others. When I am waiting on customers I am in all parts of the store. I have not paid particular attention to what was being said around the tobacco stand and have not much time to listen to what customers are saying unless they come to me with a complaint or something like that. 2990

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 2991

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IT IS STIPULATED by and between the parties, through their respective counsel, that if F. W. GEISS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

2993

My name is F. W. GEISS. I am of legal age and am the manager of and buyer for the Economy Drug Co. of Knoxville, Tennessee. The Economy Drug Co. owns three stores, all located in Knoxville. My headquarters is at one of these stores, which is located at 521 S. Gay Street. I am continually in one or the other of these stores and may say that I am in close contact with conditions in all of them. In addition to drugs, we handle such articles as tobacco, stationery, toilet articles, kodak supplies and confectioneries. In each store I employ six or seven clerks and each store serves about 4000 customers a day.

2994

I have bought and sold Beech-Nut Scrap Tobacco for about five years and Beech-Nut Cigarettes since their appearance on this market about two years ago. I have always known that both of these products were manufactured by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both packages. The salesmen from whom I bought the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were well known to me as Lorillard salesmen, or introduced themselves as such.

I have bought and sold Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Candy, all of which products I know to be manufactured by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-

Nut Scrap Tobacco or Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco package or a cigarette package. I have never known of a food products, candy or gum concern that manufactured any tobacco products, and I regard gum and cigarettes as entirely separate from food or confections.

2995

I sell Star Tobacco, Star Razor Blades and Star Electrical Apparatus, such as Waffle Irons, Vibrators, etc. None of these articles are manufactured by the same concern. I handle Velvet Tobacco and Velvet Pencils, both of which are made by different companies; Ever-Ready Razor Blades and Ever-Ready Flashlights, manufactured by different companies.

2996

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

It takes all my time running these three very busy stores. I have not a great deal of time to wait on counter and have not much opportunity to hear what customers are saying in the tobacco sections of our stores. I am too busy to talk much to customers myself unless they have some complaint, or something like that, to make.

2997

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

2998

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. BLAUFIELD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

2999

Direct Examination.

My name is J. BLAUFIELD. I am of legal age and am the owner and manager of a tobacco store located at 524 Gay St., Knoxville, Tennessee. Besides tobacco I sell periodicals, candy, gum, fountain pens, razor blades, etc. As a rule there is one clerk on duty in my store besides myself and we serve about 800 customers a day.

3000

I have handled Beech-Nut Scrap Tobacco for four or five years. It is my best selling scrap tobacco. I have always known it to be a product of the Lorillard Tobacco Co. I have handled Beech-Nut Cigarettes since they appeared on this market about two years ago. I have always known that this cigarette was made by the Lorillard Tobacco Co., and I remember that the salesman who first sold them to me represented himself to be an agent of the Lorillard Co., and he put some posters advertising the cigarette in my store at the time. I have long known of the Lorillard Co. as one of the foremost of the tobacco companies. I handle a number of their leading brands such as Climax Tobacco, Beech-Nut Scrap Tobacco, Havana Blossom Chewing Tobacco, Union Leader Smoking Tobacco, Murad Cigarettes, Helmars, Moguls, Egyptian Dieties, etc.

I sell Beech-Nut Chewing Gum and Beech-Nut Mints, which I know to be products of the Beech-Nut Packing Company. 3001

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco package or a cigarette package. I have never known of a food products, candy, or gum concern that manufactured any tobacco products, and I regard tobacco and cigarettes as an entirely separate line from food products, candy or gum. 3002

Cross Examination.

I have handled tobacco for a long time and know the different brands. I know the Lorillard salesmen who call in at my store at frequent intervals to take orders. I do not know who the salesman was who first sold me Beech-Nut Cigarettes and I cannot remember in more detail the circumstances of his visit. I am kept pretty busy in the store and have not a great deal of time to talk to customers. 3003

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

(3004

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

It is stipulated by and between the parties, through their respective counsel, that if C. F. CRAWFORD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

(3005

Direct Examination.

My name is C. F. CRAWFORD. I am of legal age and am the manager of the Atkins Hotel Cigar Stand, located in the Atkins Hotel Building, on Gay Street, Knoxville, Tennessee. In addition to tobacco I sell soft drinks, chewing gum, candy, postal cards, rings, etc. I am the only clerk on duty here and I serve about 350 customers a day. All told I have been in the tobacco business for twenty-five years, and for the past ten years have retailed tobacco and confections. Prior to that I worked for a tobacco jobbing house.

(3006

I have bought and sold Beech-Nut Scraps Tobacco for the past five or six years and it is my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market about two years ago. Those cigarettes are a poor seller with me. I have always known that both of these products were manufactured by the Lorillard Tobacco Co. I have known of the Lorillard Co. ever since I have been in the tobacco business as one of the largest of the tobacco concerns and I am thoroughly familiar with their brands, having handled many of their chewing tobaccos, smoking tobacco and cigarettes.

I sell Bush-Nat Chewing Gum and Bush-Nat Mints, and both of which products I know to be put out by the Bush-Nat Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Bush-Nat Soap Tobacco or the Bush-Nat Cigarettes to be the products of the Bush-Nat Packing Company. I have never seen a package put up by the Bush-Nat Packing Company that looked like either a soap tobacco package or a cigarette package. I know that Lowell's name is written on the front of both the soap tobacco package and the cigarette package. I have never known of a food concern, or a candy or gum company, that manufactured any tobacco products, and I regard tobacco and cigarettes as an entirely distinct line from food products or confections.

Cross Examination.

I am the only clerk in this store and am kept pretty busy waiting on customers. I have not paid particular attention to what they are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Bush-Nat Soap Tobacco or the Bush-Nat Cigarettes, or as to whether they are made by the same company that makes the Bush-Nat Gum or other Bush-Nat Packing Company products, and I had not reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable number, or frequently, I think I could have remembered the same, or such would have been impressed on my memory.

1879

3010

IT IS STIPULATED by and between the parties, through their respective counsel, that if GEO. H. BELL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3011

My name is GEO. H. BELL. I am of legal age and am the owner and manager of a small grocery store located in the residential section of Knoxville, Tennessee, at 2000 Forest Avenue. Besides food products I carry such articles as tobacco, talcum powder, handkerchiefs, suspenders, collar buttons, darning thread, brooms, etc. As a rule I am the only clerk on duty in my store and I serve about 150 customers a day.

I have handled Beech-Nut Scrap Tobacco for about five years and it is my best selling scrap tobacco. I have always known that this Scrap Tobacco was made by the P. Lorillard Co. I know that Lorillard's name is written on the front of the Beech-Nut Scrap Tobacco package.

3012

I sell Beech-Nut Chewing Gum and it is a very good seller with me. I do not know the name of the company that manufactures this gum.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be manufactured by the same concern that produces the Beech-Nut Chewing Gum.

I do not think that the gum package looks like a scrap tobacco package and I think that anyone who would accept one for the other must be crazy. I have never known of a gum concern that manufactured any tobacco products, and I regard gum and tobacco as entirely separate classes.

Cross Examination.

3012

I have handled tobacco for some years and am familiar with the brands. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

3014

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

KENTUCKY WITNESSES

IT IS STIPULATED by and between the parties, through their respective counsel, that if the parties whose names are appended hereto were called to testify in behalf of P. Lorillard Co., defendant, they would each testify as follows:

3016

Direct Examination.

I am of legal age and am a retail merchant doing business at the address given in the appended list. In addition to tobacco and cigarettes I handle other sorts of goods.

I have handled Beech-Nut Scrap Tobacco for several years. It is a fair but not a large seller with me. Hopkinsville is a large dark, loose-leaf tobacco market and

16 most people in this neighborhood use dark tobacco. I have known that Beech-Nut Scrap Tobacco was made by the Lorillard Tobacco Co. since I have been handling it. I have sold Beech-Nut Cigarettes since they appeared on this market about two years ago. These Cigarettes are not a good seller with me. I have always known that the Beech-Nut Cigarettes were also a product of the Lorillard Tobacco Co.

17 I sell Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company. I have never heard any remarks, inquiries or comments among my customers to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the products of the Beech-Nut Packing Company.

18 I do not think that the Beech-Nut Chewing Gum package looks like a scrap tobacco package or a cigarette package. I know that Lorillard's name is written on the front of both the Scrap Tobacco and the Cigarette Package. I have never heard of a candy or gum concern that manufactured any tobacco products and I regard tobacco and cigarettes as an entirely separate class of products from gum or candy. I would think that any one who would accept a package of Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes in place of a package of Beech-Nut Gum must be crazy.

Cross Examination.

I have handled tobacco for some years and am familiar with the different brands. I am kept pretty busy in my store and have not had a great deal of opportunity to hear what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that

makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 3019

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

M. O. Willis, Druggist, 9th & Main Sts.
Hopkinsville, Ky. 3020

E. H. Higgins, Druggist, Hopkinsville, Ky.

W. H. Martin, Druggist, Lathan Hotel
Hopkinsville, Ky.

F. Rogers, Grocer, 6th & Virginia Sts.
Hopkinsville, Ky.

Byrl Bullard Tobacco, Candy & Fruit, 9th
Street, Hopkinsville, Ky.

IT IS STIPULATED that W. H. MARTIN, whose name appears in the above list of witnesses, would testify on direct examination that he handles Velvet Pencils and Velvet Tobacco, made by different companies; Ever-Ready Flashlights and Ever-Ready Razor Blades, made by different companies; and that E. H. HIGGINS, whose name appears in the above list of witnesses would testify on direct examination that he sells Favorite Cigarettes and Favorite Medicines, made by different companies, Ever-Ready Flashlights and Ever-Ready Razor Blades, made by different companies; Black and White Cigars and Black and White Toilet Preparations, made by different companies; Velvet Tobacco and Velvet Pencils, made by different companies. 3021

3022 IT IS FURTHER STIPULATED that counsel for Beech-Nut Packing Company objects to above testimony by witnesses W. H. MARTIN and E. H. HIGGINS concerning the different articles sold under similar names and who makes the same, as being irrelevant and immaterial.

IT IS STIPULATED by and between parties, through their respective counsel, that if L. M. LAVIN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3023 *Direct Examination.*

My name is L. M. LAVIN. I am of legal age and am part owner and manager of a general store known as Lavin & Conwell, located at 8th and Main Sts., Paris, Kentucky. My store measures about 70 x 40'. I employ one clerk in addition to myself and we handle about 400 customers a day. I sell such articles as tobacco, locks, candy, groceries, flashlights, brooms, buckets, kettles, soap, chinaware, knives, baskets, horse-whips, axles, tri-cycles, stove plates, fishing tackle, rugs, mops, toys, roller skates, etc. My store is located directly across the street from the grocery store run by Chas. P. Cook, at 716 Main St., Paris, Ky. I know Mr. Cook personally.

3024 I have handled Beech-Nut Scrap Tobacco for four or five years and it is my best selling scrap. I have handled Beech-Nut Cigarettes since they appeared on this market. They are not a fast seller with me. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were manufactured by the P. Lorillard Co. and I know that company to be one of the most prominent of the tobacco companies. I know that Lorillard's name is written on the front of both the scrap tobacco package and the cigarette package.

I handle Beech-Nut Chewing Gum and Beech-Nut Mints. I know both these products to be manufactured by the Beech-Nut Packing Company and have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be products of the Beech-Nut Packing Company. I have never known of a food products, or candy, or gum concern that manufactured any tobacco products, and I regard tobacco or cigarettes as in an entirely separate class from gum or confections. I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package.

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3026

I sell Velvet Tobacco and Velvet Pencils, manufactured by different companies, Yale Locks and Yale Extracts, manufactured by different companies; Royal Baking Powder and Royal Shoe Polish, manufactured by different companies; Magic Yeast and Magic Cleanser, manufactured by different companies; Sunshine Cigarettes and Sunshine Biscuits, manufactured by different companies; Blue Ribbon Figs, Blue Ribbon Stove Polish, Blue Ribbon Tobacco, Blue Ribbon Oil Cans, all manufactured by different companies; Argo Starch, Argo Salmon and Argo Peaches, all manufactured by different companies.

3027

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled tobacco for a good many years and am familiar with most of the brands sold in this part of the

3028 country. I wait on customers in all parts of my grocery store and have not paid particular attention to what customers at the tobacco stand are saying.

I have made no attempt to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

3029 If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if EMMET HOWARD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3030 *Direct Examination.*

My name is EMMET HOWARD. I am of legal age and am the manager of a restaurant, located at 722 Main St., Paris, Kentucky. In my restaurant there is a tobacco and confection counter, which is located just at the right of the entrance. I wait on this counter myself. My restaurant is located next door to the grocery store run by Chas. P. Cook, and I am personally acquainted with Mr. Cook. I have been handling tobacco as a retailer for the past 18 years, before prohibition

in connection with my business as a barkeeper, and since 3031
then in connection with my restaurant business.

I have handled Beech-Nut Scrap Tobacco for the past four or five years and Beech-Nut Cigarettes since they appeared on this market about a year and a half ago. I have always known that the Lorillard Tobacco Co. manufactured both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes.

I handle Beech-Nut Chewing Gum and Beech-Nut Mints. I do not know the name of the company that manufactures these products.

I have never heard any remarks, inquiries, or comments among any customers or others to the effect, or 3032
which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the products of the same company that manufactures the Beech-Nut Gum and the Beech-Nut Mints. I have never heard of a candy or gum concern that put out any tobacco products and I regard tobacco and cigarettes as an entirely separate class of products from chewing gum or candy. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look like a chewing gum package. I serve about 200 customers a day and have a good deal of conversation with my customers as my trade does not occupy all my 3033
time.

Cross Examination.

I wait on customers both in my restaurant and at the tobacco and candy counter, which are in the same room. I work back and forth between the two portions of the room. I have been in the retail tobacco trade for many years and have known of the Lorillard Co. and various of its brands for a long time. A customer hardly ever asks who makes the tobacco or cigarette which he is buying.

034 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

3035 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. E. CRAVEN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3036 My name is J. E. CRAVEN. I am of legal age and am the owner and manager of a general store located at 708 Main St., Paris, Kentucky. I handle such articles as groceries, tobacco, quick-lunch, buggy-whips, baskets, etc. My store is located less than one block from the grocery store run by Chas. P. Cook, and I am personally acquainted with Mr. Cook. I employ one clerk besides myself.

I have handled Beech-Nut Scrap Tobacco for about two years. I remember the first salesman who sold me this Scrap Tobacco, though I do not know his name. I do remember that he told me that he represented the Lorillard Tobacco Co. and that the Beech-Nut Scrap

Tobacco was made by that company. Beech-Nut Scrap Tobacco is my best selling Scrap. 303

I handle Beech-Nut Chewing Gum and it is a very good seller. I know it to be a product of the Beech-Nut Packing Company and I know that the Beech-Nut Packing Company puts out a line of food products, although I do not handle any of them.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. I have never heard of a food or gum concern that put out any tobacco products and I regard the two lines as entirely unrelated. I know that Lorillard's name is written across the front of the Beech-Nut Scrap Tobacco package. 303

I think that anyone who would accept the Beech-Nut Scrap Tobacco package for the Beech-Nut Gum package must be crazy.

Cross Examination.

I have handled tobacco for some years and know the different brands that come into this part of the country. I have handled a number of the Lorillard tobacco products and have know from time to time the Lorillard salesmen who come into my store at frequent intervals to take orders. I do not remember the name of the salesman who first sold me the Beech-Nut Scrap Tobacco, and cannot remember the details of his visit any more than I have already described. I wait on counter in all parts of my general store and have not paid particular attention to what was being said by customers in the tobacco section. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or as to whether it is made by the same company that makes the Beech-Nut 303

1040 Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

1041 IT IS STIPULATED by and between the parties, through their respective counsel, that if L. R. BRAMBLETT were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

1042 My name is L. R. BRAMBLETT. I am of legal age and am the owner and manager of a grocery store located at 215 Main St., Paris, Kentucky. I employ one clerk besides myself. I have handled Beech-Nut Scrap Tobacco for the past five or six years. I have always known it to be a product of the P. Lorillard Co. At the time when Beech-Nut Scrap Tobacco was first introduced into my store I was handling some of the food products put up by the Beech-Nut Packing Company, such as Beech-Nut Bacon and Beech-Nut Peanut Butter. It did not occur to me that the tobacco might be put out by the Beech-Nut Packing Company.

I have never heard of a food products company that manufactured any tobacco and I regard the two lines as entirely distinct from one another. I know that Lorillard's name is written on the front of the Scrap Tobacco package. I have always known the Lorillard To-

bacco Co. as one of the largest of the tobacco companies. 3043
I have always had a good opinion of it. Beech-Nut
Scrap Tobacco is by far my best selling scrap.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. I have never seen a package put up by the Beech-Nut Packing Company which looked like a scrap tobacco package.

For my own part I would prefer tobacco made by a straight tobacco company to tobacco put up by a company in the food products business as well as the tobacco business. 3044

Cross Examination.

I have handled tobacco for a good many years, including many of the Lorillard tobacco products. I have known from time to time the Lorillard salesmen who come into my store at frequent intervals to take orders. I wait on customers in all parts of my grocery store. I have not paid much attention to what customers were saying at the tobacco counter and have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that manufactures the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any. 3045

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3046

IT IS STIPULATED by and between the parties, through their respective counsel, that if LOUIS EVERS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is LOUIS EVERS. I am of legal age and am a grocer, doing business as Evers Bros., 601 W. Chestnut St., Louisville, Kentucky. As a rule I have one clerk assisting me in my store, and we serve about 300 customers a day.

3047

I have handled Beech-Nut Scrap Tobacco for the past three or four years. It is by far my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market, somewhere around two years ago. I have always known that both of these products were manufactured by the Lorillard Tobacco Co. The cigarette is not a good seller with me.

3048

I now handle Beech-Nut Chewing Gum and it is a fairly good seller. I formerly handled some of the Beech-Nut Food Products, such as Beech-Nut Peanut Butter and Beech-Nut Pork & Beans, but I no longer carry any of these products. I have always known that the Beech-Nut Gum was manufactured by the Beech-Nut Packing Company, the same company that makes the Peanut Butter and Pork & Beans.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the same concern that produces the Beech-Nut Chewing Gum. I do not think that the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a gum package. I have never heard of a

food products or gum concern that manufactured any tobacco products and I regard tobacco and cigarettes as an entirely separate line of merchandise from food products or gum. 3049

I sell Rosebud Matches and Rosebud Cherries, made by different companies; Magic Soap and Magic Yeast, made by different companies; Home Run Sardines, Home Run Cigarettes and Home Run Cigars, all manufactured by different companies; Argo Salmon and Argo Starch, made by different companies; Star Soap and Star Tobacco, made by different companies; Picnic Twist Tobacco and Picnic Mustard, made by different companies; Blue Ribbon Tobacco, Blue Ribbon Cheese and Blue Ribbon Figs, all made by different companies. 3050

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled tobacco for some years and know the different brands. I wait on customers in all parts of my grocery store. I have not paid much attention to what people are saying about tobacco or cigarettes. 3051

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

052

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if F. ODELL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

053

Direct Examination.

My name is F. ODELL. I am of legal age and am the manager of thirteen tobacco and candy stores, all located in Louisville, Ky., and owned by the J. B. Moose Co. My headquarters are at 518 W. Main Street, Louisville, Ky. The J. B. Moose Co. are wholesalers and retailers of tobaccos and confections. I have been manager of their retail department for the past fifteen years. I am constantly at one or the other of my retail stores or stands, and am in close touch with what goes on in all of them.

054

We have handled Beech-Nut Scrap Tobacco for about seven years. I have always known it to be a product of the Lorillard Co. We have handled Beech-Nut Cigarettes since they appeared on this market. I remember that the salesman who first sold me the Beech-Nut Cigarettes told me that it was a new product of the Lorillard Co. I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package.

We have handled Beech-Nut Gum for several years at all of our stands and Beech-Nut Mints at some of them.

We handled Beech-Nut Scrap Tobacco several years before we first put in Beech-Nut Chewing Gum or Beech-Nut Mints. I know the gum to be a product of the Beech-Nut Packing Company and never heard any remarks, inquiries, or comments among my customers, clerks or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be products of the Beech-Nut Packing Company. 3055

I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package, and I think it would take a crazy man to accept either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package for the Beech-Nut Chewing Gum. 3056

I have never heard of a food products, candy, or gum concern that manufactured any tobacco products.

I have known of the Lorillard Tobacco Co. ever since I have been in business and know it to be one of the most prominent of the tobacco companies. I have handled a great many of their brands, notably Beech-Nut Scrap Tobacco, Climax Plug, Union Leader Smoking Tobacco, Murad Cigarettes, Helmars, Moguls, Egyptian Deities, etc. 3057

Cross Examination.

We do a big business at our thirteen retail tobacco stores and I divide my time between the different stores. I wait on customers myself only occasionally at one or other of the stores. I have so much else to do that I have not a great deal of opportunity to hear what people are saying in the stores. A customer hardly ever asks who makes the tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap

058 Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same or such would have been impressed on my memory.

3059 IT IS STIPULATED by and between the parties, through their respective counsel, that if H. A. TAYLOR were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3060 My name is H. A. TAYLOR. I am of legal age and am a member of the firm of T. P. Taylor & Co. This firm owns and operates four drug stores, all located in Louisville, Ky. I am the active manager of these stores and my headquarters is at one of them, which is situated at 458 Fourth Ave., Louisville, Ky. In addition to drugs all of our stores carry such articles as perfumes, toilet articles, stationery, candy, tobacco, razor blades, kodaks, etc. I very seldom wait on customers in these stores myself, but I may say that I am in close contact with what goes on in all of them.

We have handled Beech-Nut Scrap Tobacco for the past five or six years and it is a good seller. Beech-Nut Cigarettes we have handled for about two years. The Cigarette is a slow seller with us. I have always known

that both of these products were manufactured by the Lorillard Co. 3061

We handle Beech-Nut Chewing Gum and Beech-Nut Mints, both of which I know to be products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my clerks, customers, or others to the effect, or which led me to believe that they thought the Beech-Nut Cigarettes or Beech-Nut Scrap Tobacco to be manufactured by the Beech-Nut Packing Company. I have never seen a package put out by the Beech-Nut Packing Company that looks like either a scrap tobacco package or a cigarette package. I think that anyone who would accept either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package for the Beech-Nut Gum package must be crazy. I have never heard of a candy or gum concern that made any tobacco products and I regard tobacco and cigarettes as a distinct line of merchandise from candy or gum. 3062

Cross Examination.

I divide my time between the four drug stores of the T. P. Taylor Co. I have too much else to do to have much opportunity to listen to what people in my stores or elsewhere are saying about tobacco or cigarettes. 3063

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

3064

Re-direct Examination.

If I had heard any such inquiries, comments or remarks, in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if CHARLIE BRADSHAW were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3065

Direct Examination.

My name is CHARLIE BRADSHAW. I am of legal age and am a clerk at the tobacco and candy counters in the T. P. Taylor store at 458 Fourth Avenue, Louisville, Kentucky. I serve about 300 or 400 customers a day.

3066

I have been selling Beech-Nut Scrap Tobacco for the past four or five years and Beech-Nut Cigarettes since they appeared on this market about two years ago. The Beech-Nut Scrap Tobacco is a good seller, but the Beech-Nut Cigarette does not sell well with me. I have always known that both the Scrap Tobacco and the Cigarettes were products of the Lorillard Co. I handle many other Lorillard brands, such as Climax Plug, Murad Cigarettes, Moguls, Helmars, Egyptian Dieties, etc.

I sell Beech-Nut Chewing Gum, and Beech-Nut Mints, which I know to be products of the Beech-Nut Packing Company.

I have never heard any remarks, comments or inquiries among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I regard tobacco and cigarettes as entirely separate lines from chewing

gum or candy, and I have never heard of a candy or gum concern that manufactured any tobacco products. 306

I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package and I would think that anyone who would accept the Beech-Nut Gum package for either the Scrap Tobacco package or the Cigarette package must be crazy.

Cross Examination.

I have handled tobacco for many years and know the different brands. I am kept pretty busy waiting on customers. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 306

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressd on my memory. 306

3070

IT IS STIPULATED by and between the parties, through their respective counsel, that if E. R. TURNER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3071

My name is E. R. TURNER. I am of legal age and am part owner and manager of a corner drug store, located at 2000 Cherokee Parkway, Louisville, Kentucky. My store is located in the residential section of Louisville. There are two clerks on duty here besides myself, and we serve about 500 customers a day. I have charge of the Candy and Tobacco Departments of this store and spend most of my time waiting on customers in these departments.

3072

I have handled Beech-Nut Scrap Tobacco for several years and the Beech-Nut Cigarette since it appeared on this market about one and a half years ago. Beech-Nut Scrap Tobacco is my best selling Scrap, but Beech-Nut Cigarettes do not sell well with me. I have always known that both the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were products of the Lorillard Tobacco Co., and I have long known of that company as one of the oldest and largest of the tobacco companies. In addition to Beech-Nut Tobacco and Beech-Nut Cigarettes, I handle many of Lorillard's brands, such as Murad Cigarettes, Helmars, Moguls, Egyptian Deities, etc., also Union Leader Smoking Tobacco and Climax Plug Tobacco. I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package.

I handle Beech-Nut Chewing Gum and Beech-Nut Mints. They are good sellers with me. When the Cigarettes first appeared I heard perhaps four customers

ask whether the Beech-Nut Cigarettes and Beech-Nut Gum were made by the same company. I told them who made each article. Aside from these incidents I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the same concern that puts out the Beech-Nut Chewing Gum. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package, and I think that anyone who would mistake either the tobacco or cigarette package for the gum package must be crazy. I have never heard of a candy or gum concern that manufactured any tobacco products and I regard tobacco and cigarettes as an entirely separate line from chewing gum or mints.

I sell Star Tobacco and Star Razor Blades, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled tobacco for some years. I am kept pretty busy waiting on customers. I do not remember any more than the four incidents already mentioned of people who asked whether the Beech-Nut Cigarettes and Beech-Nut Gum were made by the same company. I cannot describe these incidents any more in detail. I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap

076 Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

077 If I had heard such remarks, inquiries, or comments in appreciably greater numbers than the four I have mentioned, I think that the fact would have been impressed on my mind, and that I would have remembered it.

IT IS STIPULATED by and between the parties, through their respective counsel, that if WM. H. J. MEYER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

078 My name is WM. H. J. MEYER. I am of legal age and am the owner and manager of a small retail store located at 1,605 Bardstown Ave., Louisville, Kentucky. I handle canned vegetables, confections, sodas and tobacco. My store is located in the residential section of Louisville. As a rule I am the only clerk on duty here and I serve about 200 customers a day.

I have sold Beech-Nut Cigarettes since they appeared on this market about two years ago. I remember that the salesman who first sold me these cigarettes told me that he was a representative of the Lorillard Co. and that he had advertising matter with him at the time, and put up some posters advertising Beech-Nut Cigarettes in my store.

I sell Beech-Nut Chewing Gum, Beech-Nut Beanut Butter, Beech-Nut Pork & Beans and Beech-Nut Ginger Ale. All of these products I know to be made by the Beech-Nut Packing Company. 3079

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never seen a package put out by the Beech-Nut Packing Company that looked like either a cigarette package or a scrap tobacco package. I have never heard of a food products or gum company that manufactured any tobacco products and I regard the tobacco industry as an entirely separate business from food products or gum. 3080

During the war I worked in an ammunition factory in Dayton, Ohio. While I was thus occupied, I was a chewer of Beech-Nut Scrap Tobacco. It was very popular among the workers there. I knew then that the Lorillard Co. was the maker of the Beech-Nut Scrap Tobacco.

I sell Chesterfield Cigarettes and Chesterfield Cigars made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3081

Cross Examination.

I do not remember the name of the salesman who first introduced Beech-Nut Cigarettes to my store. I cannot remember exactly the circumstances of his first visit and cannot describe them any more than I have already done. I have not paid particular attention to what people are saying about tobacco or cigarettes.

3082 I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

3083 If I had heard any such remarks, inquiries, or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if W. P. SCHAEFER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3084 My name is W. P. SCHAEFER. I am of legal age and am the owner and manager of a retail tobacco store located at 518 W. Warren St., Louisville, Kentucky. As a rule I have one clerk on duty in my store besides myself. In addition to tobacco I handle periodicals, razor blades, candy and gum. We serve about 400 customers a day.

I have handled Beech-Nut Scrap Tobacco for the past five or six years. It is by far my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market about a year and a half ago. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were

manufactured by the Lorillard Co. I know that Lorillard's name is written on the front of both packages. 3085

I sell Beech-Nut Chewing Gum and it is a good seller with me. I know it to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be products of the same concern that manufactures the Beech-Nut Chewing Gum. I have never heard of a gum concern that made any tobacco products and I do not think that chewing gum has anything whatever to do with either tobacco or cigarettes. I do not think that the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package and I think that only a crazy person would accept either the Scrap Tobacco package or the Cigarette package for the Beech-Nut Chewing Gum package. 3086

I sell Chesterfield Cigarettes and Chesterfield Cigars, manufactured by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3087

Cross Examination.

I have handled tobacco for a good many years and know the different brands. I know the Lorillard salesmen who come into my store at frequent intervals to take orders. A customer hardly ever asks who makes the tobacco or cigarette he is buying. I am kept busy waiting on customers.

088 I have made no effort to remember any inquiries, comments or remarks, as to who makes the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

089 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. G. BLOCK were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

090 My name is J. G. BLOCK. I am the owner and manager of a small grocery store located at First and Walnut Sts., Louisville, Kentucky. I serve about 200 customers a day.

I have handled Beech-Nut Scrap Tobacco for five or six years and Beech-Nut Cigarettes since they appeared on this market about two years ago. I have always known that both of these products were manufactured by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package.

I handle Beech-Nut Chewing Gum and Beech-Nut Spaghetti, both of which I know to be products of the Beech-Nut Packing Company. 3091

I have never heard any remarks, inquiries or comments among my customers or others, to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package.

I have never heard of a food products concern that made any tobacco products and I regard tobacco and cigarettes as entirely separate classes of merchandise from food products or chewing gum. 3092

Cross Examination.

I have not paid much attention to what people were saying about tobacco or cigarettes. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 3093

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

094 IT IS STIPULATED by and between the parties, through their respective counsel, that if H. G. SAAM were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

095 My name is H. G. SAAM. I am of legal age and am the owner and manager of a store located at 800 E. Broadway, Louisville, Kentucky. I sell tobacco, candy, toilet articles, drugs, magazines, razors, flashlights, etc. As a rule I have one clerk on duty in my store besides myself and we serve about 400 customers a day.

096 I have sold Beech-Nut Scrap Tobacco for two years and Beech-Nut Cigarettes since they appeared on this market about a year and a half ago. I do not remember the name of the salesman who sold me either of these products, but I do remember that when I bought the Beech-Nut Scrap Tobacco and also when I bought the Beech-Nut Cigarettes the salesman who sold them to me told me that he represented the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both the Scrap Tobacco and the Cigarette packages. I have long known of the Lorillard Tobacco Co. as one of the oldest and largest of the tobacco companies.

I handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I regard tobacco and cigarettes as an entirely separate class of merchandise from chewing gum and I have never

known of a gum concern that made any tobacco products.

3097

I handle Chesterfield Cigars and Chesterfield Cigarettes, made by different companies; Star Tobacco, Star Razor Blades and Star Mints, all made by different companies Ever-Ready Razors and Ever-Ready Flashlight, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

3098

Cross Examination.

I have handled tobacco for some years and know the different brands, including the Lorillard products. The Lorillard Co. salesmen come into my store from time to time to take orders. I do not remember exactly what the salesman said or did who first brought in for sale the Beech-Nut Scrap Tobacco, or the salesman who first brought in for sale the Beech-Nut Cigarettes, and I cannot describe their visits any more in detail than I already have done. I wait on customers in all parts of my store, selling them my various lines of articles. I have not paid much attention to what they have said about tobacco or cigarettes.

3099

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

100

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. E. COBB were called as a witness on behalf of the P. Lorillard Co., defendant, he would testify as follows:

101

Direct Examination.

My name is J. E. COBB. I am of legal age and am the owner and manager of a store located at 341 E. Broadway, Louisville, Kentucky, where I handle such articles as tobacco, confections, sodas, magazines, quick-lunch, dolls, etc. I have two clerks besides myself and we serve on an average of about 1,000 customers a day.

102

I have sold Beech-Nut Scrap Tobacco for the past seven years. It is by far my best selling scrap tobacco. I have always known it to be a product of the Lorillard Tobacco Co. and I have long known of that company as an important tobacco company. I handle many Lorillard brands, including Climax Plug Tobacco, Havanna Blossom Chewing Tobacco, Union Leader Smoking Tobacco, and such Turkish Cigarettes as Murads, Moguls, Helmars, Egyptian Dieties, etc. I have handled Beech-Nut Cigarettes for about two years. I remember that the salesman who first sold them to me told me that he was a Lorillard salesman and that he put up posters in my store at that time advertising the Beech-Nut Cigarette.

I sell Beech-Nut Chewing Gum and it is a good seller. I also sell Beech-Nut Candies, Beech-Nut Caramels,

Beech-Nut Peanut-Butter and Beech-Nut Ginger Ale. I know that these products are made by the Beech-Nut Packing Company. 3103

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I regard tobacco and cigarettes as an entirely separate line of merchandise from chewing gum or candy or food and I have never heard of a food products, candy or gum concern that manufactured any tobacco products. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package. I think it would take a crazy man to accept either of them in place of the Beech-Nut gum package. 3104

I sell Star Tobacco, Star Mints and Star Lobster, all made by different companies; Chesterfield Cigarettes and Chesterfield Cigars, made by different companies; Babe Ruth Ice Cream and Babe Ruth Candy, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3105

Cross Examination.

I have handled tobacco for many years and know the different brands. I have handled a good many of the brands put out by the Lorillard Co. and have known from time to time the Lorillard salesmen who have come into my store frequently to take orders. I do not remember who the salesman was who first sold me Beech-Nut

3106 Cigarettes and cannot remember exactly what he did or said at the time and cannot describe in detail the circumstances of his visit any more than I have already done. I have a pretty busy store. I wait on customers in all parts of it. I have not much opportunity to hear what people are saying about tobacco or cigarettes.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I
3107 say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if H. R. PETTY were called
3108 as a witness in behalf of the P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is H. R. PETTY. I am of legal age and am the manager of a retail tobacco store located at 610 Fourth St., Louisville, Kentucky. There is one clerk on duty in this store besides myself and we serve between 800 and 1,000 customers a day. In addition to tobacco we handle periodicals, candy and toys.

I have handled Beech-Nut Scrap Tobacco for the past

six or seven years. It is a big seller. I sell twice as much Beech-Nut Scrap as any other scrap tobacco. I have sold Beech-Nut Cigarettes since they appeared on this market about a year and a half ago. Beech-Nut Cigarettes are not a very good seller with me. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were manufactured by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both the Scrap Tobacco and the Cigarette packages. I have long known of the Lorillard Tobacco Co. as one of the oldest and largest of the tobacco companies. I handle a great many of their brands, such as Havanna Blossom tobacco, Union Leader tobacco, Yacht Club tobacco, Murad Cigarettes, Moguls, Helmars, Egyptian Dieties, etc. 3109

I sell Beech-Nut Chewing Gum and Beech-Nut Candies. The Beech-Nut Gum is a good seller. I have always known that these products were made by the Beech-Nut Packing Company. 3110

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look like a chewing gum package, and I think that any one who would accept either the Scrap Tobacco package or the Cigarette package for the Beech-Nut Chewing Gum package must be crazy. I have never heard of a candy or gum concern that made any tobacco products, and I regard tobacco and cigarettes as an entirely separate line of merchandise from candy or chewing gum. 3111

I sell Chesterfield Cigarettes, Chesterfield Cigars and Chesterfield Pipes; none of these articles are made by the same concern.

3112 IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under siamilr names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

3113 I have handled tobacco for a good many years and know the different brands. The Lorillard salesmen call at my store frequently to take orders. I wait on the different parts of my store myself and am kept pretty busy. I have not paid much attention to what was being said about tobacco and cigarettes.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

3114 If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3115

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. DEKING were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. DeKING. I am of legal age and am the manager of the Paulsen Cigar Store at 134th St., Louisville, Kentucky. As a rule there is one clerk on duty in this store besides myself, and we serve about 500 customers a day.

3116

I have handled Beech-Nut Scrap Tobacco for the past six or seven years. It is a very good seller and is the only scrap tobacco that I carry. I have handled Beech-Nut Cigarettes since they appeared on this market about two years ago. I have always known that both of these articles were manufactured by the Lorillard Tobacco Co. I remember that the salesman who first sold me Beech-Nut Cigarettes told me that he was a representative of the Lorillard Tobacco Co., and that at that time he put up some posters in my store advertising the Beech-Nut Cigarettes. I know that Lorillard's name is written on both the Scrap Tobacco package and the Cigarette package. I handle many Lorillard brands, such as Climax Plug Tobacco, Union Leader Smoking Tobacco, Murad Cigarettes, Helmars, Moguls, Egyptian Dieties, etc. I have long known of the Lorillard Co. as one of the largest and most important of the tobacco companies.

3117

I sell Beech-Nut Cigars, but I do not know the name of the company that manufactures these cigars. I think that it is made somewhere near Pittsburg, Pa.

I sell Beech-Nut Chewing Gum and Beech-Nut Mints. I know both of these products to be made by the Beech-Nut Packing Company.

3118 I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never heard of a candy or gum concern that manufactured any tobacco products. I regard tobacco and cigarettes as an entirely separate class of merchandise from gum or mints, and I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package.

3119 I would think that anyone who would accept either the Beech-Nut Scrap Tobacco or the the Beech-Nut Cigarettes in place of Beech-Nut Chewing Gum must be crazy.

I sell Chesterfield Cigars and Chesterfield Cigarettes. These articles are made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

3120 I have handled tobacco for many years and know the different brands. I am kept pretty busy in my store and have not much opportunity to listen to what customers are saying. I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

I have known from time to time the Lorillard salesmen who call in at my store. I do not remember who the salesman was who first sold me Beech-Nut Cigarettes. I cannot remember exactly what he did or said, and cannot describe in detail the circumstances of his visit any more than I have already done. 3121

Re-direct Examination.

If I had heard any remarks, inquiries, or comments among my customers or others which indicated to me that they thought the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes to be the product of the Beech-Nut Packing Company, I think that they would have been impressed on my memory, and that I would now remember the same. 3122

IT IS STIPULATED by and between the parties, through their respective counsel, that if W. B. ZULWOOD were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is W. B. ZULWOOD. I am of legal age and am part owner and manager of a drug store, known as Geo. Zulwood & Co., located at 311 W. Market St., Louisville, Kentucky. In addition to drugs we handle such lines as toilet articles, stationery, candy, tobacco, etc. There are two clerks besides myself on duty in this store and we serve about 600 customers a day. 3123

We have sold Beech-Nut Scrap Tobacco for the past five years and the Beech-Nut Cigarettes since they appeared on this market. The Scrap Tobacco is a very good seller, but the Cigarette does not sell well with us.

3124 I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were products of the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package. I have long known of Lorillard as one of the oldest and largest tobacco companies.

I sell Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Ginger Ale. I know that all of these products are manufactured by the Beech-Nut Packing Company. I remember that in all my experience I have heard about six people ask whether either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes were made by the same company that manufactures the Beech-Nut Gum and Beech-Nut Mints. I think that this occurred soon after the cigarettes appeared on the market. I cannot say positively whether or not all of these inquiries were made after the cigarette appeared on the market or not. I know that I have heard no such inquiries since shortly after the appearance of the cigarette. Of course I told the people that asked me this question that the Beech-Nut Tobacco and the Beech-Nut Cigarettes were the product of the Lorillard Co. and that the other articles were made by the Beech-Nut Packing Company. I can state positively that I have never heard more than ten such remarks and I do not think it was more than six.

Except for these instances I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Cigarettes or Beech-Nut Scrap Tobacco to be the products of the Beech-Nut Packing Company. I have never heard of a gum or candy concern that manufactured any tobacco products and I regard tobacco and cigarettes as a line of merchandise entirely separate from candy or chewing gum.

I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package and I think that anyone who would accept the tobacco or cigarette packages in place of the gum package must be crazy. 3127

I sell Ever-Ready Flashlights and Every-Ready Razor Blades. These articles are manufactured by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3128

Cross Examination.

I have handled tobacco for a long time and know the different brands. I wait on customers in all parts of my drug store. I do not remember now any more than the half dozen to ten cases of where people asked me whether the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes were made by the same company that makes the Beech-Nut Gum and Mints. I cannot remember who these people were or any other details of the incidents. I have made no particular effort to remember such things and have no reason to do so. 3129

Re-direct Examination.

If I had heard such remarks, inquiries or comments in appreciably greater number than the six I have mentioned. I think that they would have been impressed upon my mind and that I would now remember them.

3130

IT IS STIPULATED by and between the parties, through their respective counsel, that if BERTHA ROSENFELD were called as a witness on behalf of P. Lorillard Co., defendant, she would testify as follows:

Direct Examination.

My name is BERTHA ROSENFELD. I am of legal age and for the past year have been the manager of the tobacco and candy counters in the Rice Drug Store at 5th and Walnut Sts., Louisville, Kentucky. I serve about 250 customers a day at these counters.

3131

Ever since I have been here we have sold Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes. The Scrap Tobacco is our best selling scrap, but the Cigarette is a slow seller. I know that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes are manufactured by the Lorillard Tobacco Co. I have noticed Lorillard's name on the front of both the Scrap Tobacco and the Cigarette packages.

I sell Beech-Nut Gums and Beech-Nut Mints. I know that those articles are manufactured by the Beech-Nut Packing Company.

3132

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the same concern that puts out Beech-Nut Chewing Gum and Mints. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette Package looks at all like a Chewing Gum package, and I would think that anyone who would accept either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package for the Beech-Nut Gum package must be crazy.

I sell Chesterfield Cigars and Chesterfield Cigarettes. These articles are made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

3133

Cross Examination.

I have not paid a great deal of attention to what people are saying around my counter. A customer hardly ever asks who makes the cigarette or tobacco he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

3134

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3135

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. L. SHINFESSEL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is J. L. SHINFESSEL. I am of legal age and am the manager of the tobacco and confection department at the Reo Bus waiting station at Short &

3136 Upper Sts., Lexington, Kentucky. This waiting station is a room which measures about 50x50'. My tobacco and confection stand extends across one side of this room. I wait on these counters myself and as a natural thing in such an establishment as this I have a good deal of conversation with my customers.

I have handled Beech-Nut Scrap Tobacco for about five years. It is my best selling scrap. I have always known it to be a product of the Lorillard Co. I have sold Beech-Nut Cigarettes since they appeared on this market about two years ago and have always known that this product was also made by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both the Scrap Tobacco and the Cigarette packages.

3137 I handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package looks at all like a gum package and I think that anyone who would accept either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette in place of the Beech-Nut Gum must be crazy.

3138 I have never known of a confection or gum concern which put out any tobacco products and I regard tobacco and cigarettes as an entirely separate line from gum or confections.

Cross Examination.

I have handled tobacco for a good many years and know the different brands. I have made no effort to remember any inquiries, comments, or remarks as to who

makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 3139

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 3140

IT IS STIPULATED by and between the parties, through their respective counsel, that if the men whose names and addresses here appear, to wit:

E. W. Spears, Retail Tobacconist, Fayette Bank Bldg., Lexington, Ky.

L. D. Armstead, Druggist, Mill & Short Sts., Lexington, Ky.

C. E. McCarthy, Druggist, 309 W. Main St. Lexington, Ky. 3141

R. V. Harp, Grocer, 316-318 W. Short St., Lexington, Ky.

were called as witnesses on behalf of P. Lorillard Co., defendant, they would each testify as follows:

Direct Examination.

I am of legal age, and have for some years retailed tobacco along with other lines of merchandise. I have handled Beech-Nut Scrap Tobacco for several years. It is a very good seller. I have handled Beech-Nut Ciga-

142 rettes for about two years. These cigarettes do not sell well with me. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were manufactured by the Lorillard Co. I know the Lorillard Tobacco Co. to be one of the oldest and largest of the tobacco companies.

I sell Beech-Nut Chewing Gum and Beech-Nut Candies, and I know that these products are made by the Beech-Nut Packing Company. I have never heard any inquiries, comments or remarks from my customers or others, to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes to be manufactured by the Beech-Nut Packing Company.

143 I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look like the Gum package. I know that Lorillard's name is written on the front of the Scrap Tobacco and Cigarette packages. I would think that anyone who would accept either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes in the place of Beech-Nut Chewing Gum must be crazy.

144 I have never heard of a candy or gum concern which put out any tobacco products, and I regard tobacco and cigarettes as a distinct line of merchandise from gum and candies.

Cross Examination.

I have handled tobacco for some years and am familiar with the different brands. I am kept pretty busy in my store and have not paid much attention to what people were saying about tobacco or cigarettes.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the

Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 3145

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS FURTHER STIPULATED that R. V. HARP, whose, name appears in the above list of witnesses, would testify in addition on direct examination that he sells Camel Cigarettes and Camel Dates, made by different companies; Star Hams and Star Milk and Star Tobacco, all put up by different companies. 3146

IT IS FURTHER STIPULATED that counsel for Beech-Nut Packing Company objects to the testimony by the witness R. V. HARP in regard to Camel Cigarettes and dates and Star Hams, Milk and Tobacco, and as to who makes same, as irrelevant and immaterial.

PENNSYLVANIA WITNESSES 3147

IT IS STIPULATED by and between the parties, through their respective counsel, that if P. J. Rosswog were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is P. J. ROSSWOG. I am of legal age and am a retail tobacco merchant, doing business at 960 Liberty Ave., Pittsburg, Pa. I have been in the retail

148 tobacco business for 45 years and have been in this same store for more than twenty years. I have two clerks on duty here besides myself and serve about 2,000 customers a day. My store measures about 50x30' and is in the heart of the business section of Pittsburg.

I sell Lorillard's Beech-Nut Scrap Tobacco and have sold it for four or five years. I know that Beech-Nut Scrap Tobacco is a product of the Lorillard Tobacco Co. and I have known of the Lorillard Co. ever since I have been in business and have handled some of their brands all that time. I now handle such Lorillard brands as Climax Plug Tobacco, Beech-Nut Scrap Tobacco, Havana Blossom Scrap Tobacco, Union Leader Smoking Tobacco, Yacht Club Smoking Tobacco, Egyptian Dieties Cigarettes, Murads, Moguls, Helmars, London Life, etc., and a good many others. I have handled the Beech-Nut Cigarettes since they appeared on this market about one and a half years ago and have always known that they were a product of the Lorillard Co. I know that Lorillard's name is written on the front of the Beech-Nut Cigarette package and the Beech-Nut Scrap Tobacco package.

149 I handle Beech-Nut Chewing Gum and Beech-Nut Mints, which I know to be products of the Beech-Nut Packing Company.

150 I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the products of the Beech-Nut Packing Company.

Beech-Nut Scrap Tobacco is by far my best selling scrap and has been for a number of years. When I first saw the Beech-Nut Cigarette I naturally associated it with the Scrap Tobacco which I have long known as a Lorillard product.

I have never heard of a candy or gum concern that made any tobacco products. I regard tobacco and cigarettes as in no way connected with food, candy, or gum. I look upon tobacco and cigarettes as an entirely separate line from either gum or candy. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package looks like a chewing gum package and I would think that anyone who would accept either the Scrap Tobacco or the Cigarette package for the Beech-Nut Gum package must be crazy. 3151

I sell Chesterfield Cigarettes and Chesterfield Pipes. These articles are made by different companies.

I might further say that as far back as 1900 I sold a scrap tobacco which bore the name "Beechnut." This old Beech-Nut Scrap was originally put out by Harry Weissinger Tobacco Co., and the package bore the picture of a squirrel, together with the name "Beechnut," and as I recall it, the name of the Weissinger concern or its successor. I sold this Weissinger Beechnut Tobacco for several years following 1900, but did not keep or sell it after 1910. 3152

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same. 3153
on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled large quantities of Lorillard Co. tobacco products and have for many years known the Lorillard salesmen in the Pittsburg district who are frequently in my store to take orders. I have known Mr. Hirsh, the Lorillard District Manager for the Pittsburg District for some years. I do not remember the circum-

3154 stances of the first time when Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes were introduced into my store, and I cannot remember the name of the salesman from whom I made the first purchase in either case. I have a busy downtown tobacco store and am kept very busy waiting on customers. I have made no attempt to remember any remarks, inquiries, or comments as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

3155 I do not remember exactly when I first began to handle the Weissinger Beech-Nut tobacco or exactly when I made my last sale of it.

Re-direct Examination.

If I had heard any remarks, inquiries, or comments among my customers or others which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette to be manufactured by the Beech-Nut Packing Company, frequently, or in appreciable numbers, I think that the same would have been impressed on my memory and that I would recall them.

3156

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. BORENSTEIN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is M. BORENSTEIN. I am of legal age and have been in the retail tobacco business at 120 East Ohio St., North Side, Pittsburg, Pa., for the past fifteen years. In addition to tobacco I now handle candy, periodicals,

clocks, toilet articles, stationery, etc. As a rule I have one clerk on duty in my store besides myself and we serve about 700 customers a day. 3157

I have handled Lorillard's Beech-Nut Scrap Tobacco since it came on the market several years ago. For a number of years past Lorillard's Beech-Nut Scrap Tobacco has been by far my best selling scrap. I do not sell half as much of any other scrap tobacco as I do of the Beech-Nut. I have known of the Lorillard Co. as one of the largest and most important of the tobacco companies, ever since I have been in the tobacco business. I have handled Beech-Nut Cigarettes since they appeared on this market about two years ago and have always known that the Lorillard Co. manufactured them. 3158

I handle Beech-Nut Chewing Gum which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I regard gum as in no way related to tobacco and cigarettes. I have never known of a candy or gum concern that manufactured any tobacco products. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package looks at all like a Chewing Gum package and I would think that anyone who would accept the Scrap Tobacco package or the Cigarette package in place of the Beech-Nut Gum package must be crazy. 3159

I sell Chesterfield Cigarettes and Chesterfield Pipes, manufactured by different companies; Star Tobacco and Star Blades, made by different companies; Velvet Tobacco and Velvet Pencils, made by different companies; Every-Ready Razor Blades and Ever-Ready Flashlights, made by different companies.

160 I might further say that as far back as 1900 I sold a scrap tobacco which bore the name "Beechnut." This old Beechnut Scrap was originally put out by Harry Weissinger Tobacco Co., and the package bore the picture of a squirrel, together with the name "Beechnut," and as I recall it, the name of the Weissinger concern or its successor. I sold this Weissinger Beechnut Tobacco for several years following 1900, but did not keep or sell it after 1910.

161 IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

162 I have handled considerable quantities of tobacco products of the Lorillard Co., and have for many years known the Lorillard salesmen in the Pittsburg district who have called in at my store. I have known the Lorillard District Manager for Pittsburg, Mr. Hirsh, for some time. I keep other lines of goods besides tobacco, and am kept pretty busy waiting on the different parts of the store. I have not had a great deal of opportunity to listen to what tobacco customers are saying. I have made no attempt to remember any remarks, inquiries or comments as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, and had no reason to do so. When I say that I have never heard any such inquiries or remarks, I mean that I do not remember any.

I do not remember exactly when I first began to handle the old Weissinger Beechnut Tobacco or when I made my last sale of it.

Re-direct Examination.

3163

If I had heard any remarks, inquiries or comments among my customers or others which led me to believe that they thought the *Beech-Nut Scrap Tobacco* or the *Beech-Nut Cigarette* to be manufactured by the *Beech-Nut Packing Company*, frequently, or in appreciable numbers, I think that the same would have been impressed on my memory, and that I would recall them.

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. J. FLEISCHAUER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3164

Direct Examination.

My name is A. J. FLEISCHAUER. I am of legal age and am the manager of a tobacco store located in the heart of the business section of Pittsburg, Pa., at 326 Federal Street. I have, as a rule, one clerk on duty here in addition to myself and we serve about 800 customers a day.

I handled *Beech-Nut Scrap Tobacco* since 1915 and have always known it to be manufactured by the *Lorillard Tobacco Co.* I know that *Lorillard's* name is written on the front of the *Beech-Nut Scrap Tobacco* package. *Beech-Nut Scrap* is by far my best selling scrap tobacco. I believe that I sell on an average of about 288 packages a week. I have handled *Beech-Nut Cigarettes* since they appeared on this market in the fall of 1921. I do not have a very good sale for these cigarettes. I remember that the salesman who first sold me *Beech-Nut Cigarettes* represented himself to be an agent of the *Lorillard Tobacco Co.* I naturally associated the *Beech-Nut Cigarette* with the *Beech-Nut*

3165

B166 Scrap Tobacco, which has been one of my leading brands for several years.

I sell Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Caramels, all of which I know to be made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I regard tobacco and cigarettes as an entirely separate line of merchandise from chewing gum or candy and I have
B167 never known of a candy or gum concern that made any tobacco products. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a Chewing Gum package. I would think that anyone who would accept the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette in place of the Beech-Nut Gum package must be crazy.

I sell Velvet Tobacco and Velvet Pencils, made by different companies; Chesterfield Pipes and Chesterfield Cigarettes, made by different companies; Ever-Ready Razor Blades and Ever-Ready Flashlights, made
B168 by different companies; Star Tobacco and Star Razor Blades, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled tobacco for many years and am familiar with the different brands. I have bought

considerable quantities of Lorillard tobacco products and have known the Lorillard salesmen for a long time as they come into my store to take orders. I have known Mr. Hirsh, the Lorillard District Manager for Pittsburg, for some years, I do not remember the name of the salesman who first sold me Beech-Nut Cigarettes. I cannot remember exactly what he did or said on that occasion. I cannot describe his visit any more than I have already done. I have a busy store and have not much opportunity to talk to customers or hear what they are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. GORENSTEIN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. GORENSTEIN. I am of legal age and am a retail merchant doing business at 220 Federal

3172 Street, Pittsburg, Pa. I carry such articles as tobacco, candy, clocks, magazines, stationery, etc. I employ one clerk besides myself.

I have handled Beech-Nut Scrap Tobacco for about seven years and Beech-Nut Cigarettes since they appeared on this market. I have always known that both of these products were manufactured by the Lorillard Tobacco Co. and I have long known of that company as one of the oldest and largest of the tobacco concerns. I handle a number of the Lorillard brands, such as Climax Plug, Havanna Blossom and such Turkish Cigarettes as Egyptian Deities, Helmars, Moguls, Murads, etc. I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package. Beech-Nut Scrap Tobacco is by far my best selling scrap tobacco, but Beech-Nut Cigarettes do not sell well with me.

3173

I handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I do not think that either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette package looks at all like a chewing gum package. I have never heard of a gum or candy concern that manufactured any tobacco products. I regard cigarettes and tobacco as an entirely distinct line of merchandise from gum or confections.

3174

I sell Velvet Tobacco and Velvet Pencils, made by different companies; Star Tobacco and Star Razor Blades, made by different companies; Yankee Peanut Brittle and Yankee Watches, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

3175

Cross Examination.

I have handled tobacco for many years and know the different brands. I have known the Lorillard salesmen in this district for a long time as they come into my store to take orders. I am kept pretty busy in the different parts of my store and have not a great deal of opportunity to hear what customers are saying.

3176

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3177

3184

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if CHAS. F. SMITH were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3185

Direct Examination.

My name is CHAS. F. SMITH. I am of legal age and am the manager of three retail tobacco stores, all located in the business section of Pittsburg, Pa. I am usually to be found in one of these stores at 444 Wood St., Pittsburg, Pa. I employ two clerks in each of these stores and spend all of my time in one or the other of them and may say that I am in close contact with what goes on in all of them.

3186

I have handled Beech-Nut Scrap Tobacco for the past six or seven years and have always known it to be manufactured by the Lorillard Co. I have handled Beech-Nut Cigarettes since they first appeared on this market and have always known that this article was also made by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both the Scrap Tobacco and the Cigarette packages.

I handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut

Scrap Tobacco or the Beech-Nut Cigarettes to be manufactured by the Beech-Nut Packing Company. I do not think that either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette packages look at all like a gum package, and I think that anyone who would accept the scrap tobacco or cigarette packages in place of the Beech-Nut gum package must be crazy. I have never heard of a candy or gum concern that made any tobacco products, and I regard tobacco and cigarettes as an entirely distinct line of merchandise from candy or gum.

Beech-Nut Scrap Tobacco is by far my best selling scrap. Beech-Nut Cigarettes sell fairly well with me. Beech-Nut Gum is a good seller.

I sell Chesterfield Cigarettes and Chesterfield Pipes, made by different companies; Velvet Tobacco and Velvet Pencils, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have been in the retail tobacco business for many years and am familiar with the different brands. I have bought large quantities of Lorillard tobacco products and have known for a long time the Lorillard salesmen in this district. I divide my time between my three stores. They all do a good business and it keeps me busy looking after them. I have not had a great deal of time to listen to what customers are saying. A customer hardly ever asks who makes the cigarette or tobacco he is buying.

3190 I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

3191 If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. E. DETWILER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3192 My name is J. E. DETWILER. I am of legal age and have been in the retail tobacco business for the past ten years. I now do business at 440 Wood St., Pittsburgh, Pa., where I serve about 300 customers a day. As a rule I am the only clerk on duty here, but I have one assistant during the rush hour.

I have handled Beech-Nut Scrap Tobacco for five or six years and have always known it to be a product of the Lorillard Co. It is my best selling scrap tobacco. I have handled Beech-Nut Cigarettes since they appeared on this market. I remember that the salesman who first sold me these cigarettes represented himself to be an agent of the Lorillard Tobacco Co., and that he had ad-

vertising matter with him at the time and put up some posters in my store advertising the Beech-Nut Cigarettes. I do not have a very good sale for Beech-Nut Cigarettes. 3193

I handle Beech-Nut Chewing Gum, which is a good seller, and which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have always regarded tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum or confections, and I have never known of a candy or gum concern that made any tobacco products. 3194

I think that anyone who would accept the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette package in place of the Beech-Nut Chewing Gum package must be crazy.

Cross Examination.

I have bought brands put out by the Lorillard Co. for many years and have known the Lorillard salesmen in this district, who come into my store to take orders. I do not remember the name of the salesman who first sold me Beech-Nut Cigarettes and cannot remember the details of his visit at that time any more than I have already described. I am kept pretty busy in my store, and have not much opportunity as a rule to listen to what customers are saying. A customer hardly ever asks who makes the cigarettes or tobacco he is buying. 3195

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to

196 whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

197 It is STIPULATED by and between the parties, through their respective counsel, that if LOUIS HUCK were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is LOUIS HUCK. I am of legal age and am a retail tobacco merchant doing business at 508 Liberty Ave., Pittsburg, Pa. Besides tobacco I handle such articles as candy, chewing gum, and razor blades. 198 I serve about 300 customers a day and as a rule I am the only clerk on duty in my store.

I have handled Beech-Nut Scrap Tobacco for about six years and Beech-Nut Cigarettes since they first appeared on this market. Beech-Nut Scrap Tobacco is my best selling scrap tobacco and the Beech-Nut Cigarettes sell fairly well with me. I have always known that both of these products were manufactured by the Lorillard Tobacco Co., and I have long known of that company as one of the oldest and largest of the tobacco companies. I handle a number of their brands, such as

Murad Cigarettes, Moguls, Egyptian Deities, Helmars, etc. 3199

I handle Beech-Nut Chewing Gum, which is a good seller and which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the same concern that manufactures Beech-Nut Chewing Gum. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look like a gum package and I would think that anyone who would accept the Scrap Tobacco package or the Cigarette package in place of Beech-Nut Gum must be crazy. I have never known of a candy or gum concern that put out any tobacco products and I regard tobacco and cigarettes as an entirely different line from chewing gum. 3200

I sell Chesterfield Pipes and Chesterfield Cigarettes, made by different companies; Star Razor Blades and Star Tobacco, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3201

Cross Examination.

A customer hardly ever asks who makes the cigarettes or tobacco which he is buying. I am pretty busy looking after my store and have not a great deal of opportunity to listen to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether

202 they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

203

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. PETTY were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

204

My name is A. PETTY. I am of legal age and am the manager of the Russell Co., Inc., having my headquarters at 957 Federal Ave., Pittsburg, Pa. The Russell Co. Inc., runs fourteen retail tobacco stores, ten of which are located in the business section and four of which are located in other parts of the city. I would say roughly that each of my stores averages about 700 customers a day. I am the buyer for this company and I spend all of my time in one or another of my stores and may say that I am in close contact with conditions in all of them. At times I wait on customers myself, especially in the store located at 967 Federal Avenue.

I have bought and sold Beech-Nut Scrap Tobacco for about seven years and it is my best selling scrap tobacco. I do not think that I sell more than half as much of any other scrap tobacco. I have always known that the Lor-

illard Tobacco Co. made the Beech-Nut Scrap Tobacco, and I have long known of the Lorillard Co. as one of the largest and most important of the tobacco companies. I have sold Beech-Nut Cigarettes since they appeared on this market about two years ago and have always known that this cigarette was a product of the Lorillard Co. I know that Lorillard's name is written on the front of both the Scrap Tobacco package and the Cigarette package.

I handle Beech-Nut Chewing Gum and Beech-Nut Mints, which I know to be products of the Beech-Nut Packing Company. The Beech-Nut Gum is a good seller with me.

I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a gum package. I think that anyone who would accept either in place of Beech-Nut gum must be crazy. I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company.

I sell Mogul Playing Cards and Mogul Cigarettes, manufactured by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled tobacco for many years and have bought large quantities of brands made by the Lorillard Co. I have known the Lorillard salesmen in this district and have known Mr. Hirsh, the District Sales Manager for Pittsburg, for some years. It keeps me very busy

3208 looking after the fourteen stores and I have not a great deal of opportunity to listen to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

3209

Re-direct Examination.

If I had heard any such remarks, inquiries or comments in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. KIDNER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3210

Direct Examination.

My name is A. KIDNER. I am of legal age and am a retail merchant doing business at the corner of Penn and Hyland Aves., E. Liberty, Pittsburg, Pa. I sell such articles as candy, tobacco, novelties and periodicals. I employ one clerk besides myself and we serve between 400 and 500 customers a day. I have handled Beech-Nut Scrap Tobacco since 1915 and I have always known this to be a product of the Lorillard Tobacco Co. It is my best selling scrap tobacco. I have handled Beech-Nut Cigarettes for the past month. The salesman who first sold me these cigarettes a month ago told me that he

was a representative of the Lorillard Tobacco Co. and in recommending the Beech-Nut Cigarettes to me he called my attention to the fact that it was made by the Lorillard Co., and spoke of that company as the manufacturer of Beech-Nut Scrap Tobacco, also mentioning some other Lorillard brands.

321

I sell Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never heard of a candy or gum concern that manufactured any tobacco products and I regard tobacco and cigarettes as an entirely distinct line from gum or confections.

3212

I do not think that the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package and I regard the two lines of merchandise as entirely separate from one another.

I sell Velvet Tobacco and Velvet Pencils, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

3213

Cross Examination.

I keep a varied line of articles in my store. I have handled tobacco for some years. I have known from time to time the Lorillard salesmen who call in at my store to take orders. I am kept pretty busy attending the different parts of my store and have not much time to pay attention to what people are saying around the tobacco section.

- 3214 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

- 3215 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if Jos. H. Rosswog were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

- 3216 My name is JOS. H. ROSSWOG. I am of legal age and am a retail tobacco merchant doing business at 62-63 Frankstown Ave., E. Liberty, Pittsburg, Pa I employ two clerks besides myself and we serve about 500 customers a day. I have handled Beech-Nut Scrap Tobacco for about six years and have always known it to be a product of the Lorillard Co. It is my best selling scrap tobacco. I have sold Beech-Nut Cigarettes since they appeared on this market about two years ago and have always known that these cigarettes were manufactured by the Lorillard Co. I know that Lorillard's name is written on the front of

both the Scrap Tobacco package and the Cigarette package. 321

I sell Beech-Nut Chewing Gum, which is a good seller, and which I know to be a product of the Beech-Nut Packing Company. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look like a chewing gum package.

I have never heard more than four or five remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I told the four or five persons who did inquire of me that Lorillard made the tobacco and the cigarettes and that the Beech-Nut Packing Company made the gum. I regard chewing gum and tobacco as entirely separate classes of goods. I have never heard of a gum or confection concern that manufactured any tobacco products. 321

I sell Ever-Ready Razor Blades and Every-Ready Flashlights, made by different companies; Chesterfield Cigars and Chesterfield Pipes, made by different companies; Mogul Cigarettes and Mogul Playing Cards, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 321

Cross Examination.

I have handled tobacco for many years and know the different brands. I have known the Lorillard salesmen who call at my store at frequent intervals to take orders. I am kept pretty busy in my store and have

220 not paid a great deal of attention to remarks at the counter. A customer hardly ever asks who makes the cigarette or tobacco he is buying. I do not remember any more instances than the four or five which I have mentioned where people have asked me whether the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes were the products of the Beech-Nut Packing Company. I cannot remember who these people were or give any more details as to what occurred at the respective times. I have made no particular effort to remember such inquiries, remarks or occurrences.

221 *Re-direct Examination.*

If I had heard an appreciably greater number than four or five such remarks, inquiries or comments I think that that fact would have been impressed upon my mind and that I would have remembered it.

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. J. FARRELL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

222 *Direct Examination.*

My name is M. J. FARRELL. I am of legal age and am the manager of Bocks-Stauffer Co., 1111 Pennsylvania Ave., Pittsburg, Pa. The Bocks-Stauffer Co. is mainly engaged in the retail tobacco business and does a small tobacco jobbing business in addition. This company runs eleven tobacco stores, all located in Pittsburg, Pa. I do the buying for all of these stores and spend most of my time in one or another of them. I am in close contact with what goes on in all of them.

I have bought and sold Beech-Nut Scrap Tobacco for

six or seven years and have always known it to be a product of the Lorillard Co. I have handled Beech-Nut Cigarettes since they appeared on this market about two years ago and have always known that this cigarette was manufactured by the P. Lorillard Co. I know that Lorillard's name is written on the front of both the Beech-Nut Scrap Tobacco package and the Beech-Nut Cigarette package. I know the Lorillard Co. to be one of the largest and most important of the tobacco concerns and I handle many of their brands.

I buy and sell Beech-Nut Chewing Gum, Beech-Nut Mints and Beech-Nut Candies, which I know to be products of the Beech-Nut Packing Company.

I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package, and I think that anyone who would accept either the scrap tobacco or the cigarette package in place of Beech-Nut Gum must be crazy.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never known of a gum or candy concern that manufactured any tobacco products, and I regard tobacco and cigarettes as entirely distinct lines from chewing gum or candy.

Cross Examination.

I have bought large quantities of Lorillard tobacco products and have for many years known the Lorillard salesmen in the Pittsburg district. I divide my time among our eleven stores. They do a good business and it takes all of my time looking after them. I have not

3226 much opportunity to listen to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

3227 *Re-direct Examination.*

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if WM. C. DICKEL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3228 *Direct Examination.*

My name is WM. C. DICKEL. I am of legal age and am a grocer, doing business at 1008 Madison Ave., North Side, Pittsburg, Pa. I have handled Beech-Nut Scrap Tobacco for several years and I know it to be a product of the Lorillard Co. I know that Lorillard's name is written on the front of the package.

I sell Beech-Nut Chewing Gum and I know it to be made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-

Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. I do not think that the Beech-Nut Scrap Tobacco package looks at all like a chewing gum package and I think that anyone who would accept the scrap tobacco in place of Beech-Nut gum must be crazy. I have never known of a gum concern which manufactured any tobacco products and I regard tobacco and gum as entirely unrelated products.

I sell Jack Frost Tobacco and Jack Frost Sugar, made by different companies; Mozart Cigars and Mozart Canned Foods, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I wait on all parts of my grocery store. I do not pay much attention to what people are saying at the tobacco counter. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if S. SAMUELS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is S. SAMUELS. I am of legal age and for the past six months have been part owner and manager of a first class drug store located at Forward and Murray Ave., Squirrel Hill, Pittsburg, Pa. My store is located in the best residential section of Pittsburg. I employ three clerks besides my self. In addition to drugs we handle such articles as toilet articles, stationery, tobacco, sodas, candy, etc. Before coming here I was for nine years a retail tobacco merchant, doing business at the corner of 6th and Pennsylvania Avenues, Pittsburg, Pa.

I have sold Beech-Nut Scrap Tobacco for six or seven years and Beech-Nut Cigarettes for about two years. I have handled these articles both at my former location and in my present location. The Beech-Nut Scrap Tobacco is my best selling scrap. Beech-Nut Cigarettes sold very well for me prior to the time that I moved to my present store. I do not sell many of them here. I have always known that both the Beech-Nut Scrap Tobacco and Beech-Nut Cigarettes were manufactured by the Lorillard Co. I know that Lorillard's name is written on the front of the Scrap Tobacco and the Cigarette packages. I have long known of the Lorillard Co. as one of the most prominent of the tobacco companies, and I am always glad to handle a Lorillard product.

I have sold Beech-Nut Chewing Gum, both before and since I went into business here and I know it to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package look at all like a chewing gum package, and I would think that anyone who would accept either of them in place of Beech-Nut Gum must be crazy.

3235

I have never known of a candy or gum concern that manufactured any tobacco products and I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum or candy.

3236

I sell Mavis Candy and Mavis Talcum Powder, manufactured by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I have handled tobacco for many years. I have bought considerable quantities of Lorillard tobacco products and have known the Lorillard salesmen from time to time who come around to take orders. I have been in a busy store both downtown and up here on Squirrel Hill and have not had much time to converse with customers or opportunity to hear what they are saying.

3237

I have made no effort to remember any inquiries, comments, or reports as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company

3238 products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any .

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3239 IT IS STIPULATED by and between the parties, through their respective counsel, that if MAX SELTZMAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is MAX SELTZMAN. I am of legal age and am a grocer doing business at 1534 Electric Ave., East Pittsburg, Pa. I run a small grocery store where I serve about 100 customers a day. I am usually the only clerk on duty here.

3240 I have handled Beech-Nut Scrap Tobacco for the past five or six years, and it is a very good seller. I know it to be a product of the Lorillard Tobacco Co.

I handle Beech-Nut Chewing Gum, which I know to be a product of the Beech-Nut Packing Company.

I know that Lorillard's name is written on the front of the Scrap Tobacco package. I do not think that the Scrap Tobacco package looks like a gum package. I have never known of a candy or gum concern that manufactured any tobacco products. I regard tobacco and gum as entirely distinct lines of merchandise.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or

which led me to believe, that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. 32

I sell Gold Medal Flour, Gold Medal Coffee and Gold Medal Tooth Paste, all of which are made by different companies; Ideal Salad Oil and Ideal Salt, made by different companies; Royal Baking Powder and Royal Bluing made by different companies; Eagle Brand Milk, Eagle Brand Sardines and Eagle Brand Noodles, all made by different companies; White House Coffee and White House Ketchup, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 33

Cross Examination.

I wait on the different parts of my grocery store myself. I have not paid much attention to what people are saying about tobacco.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 34

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

244

IT IS STIPULATED by and between the parties, through their respective counsel, that if A. W. MEYERS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. W. MEYERS. I am of legal age and am a grocer doing business at 611 Market St., McKeesport, Pa. As a rule my wife and myself are the only clerks on duty in this store, which is not a large one.

245

I have handled Beech-Nut Scrap Tobacco for a number of years and Beech-Nut Cigarettes since they appeared on this market. I know that both of these products are made by the Lorillard Tobacco Co., and that Lorillard's name is written on the front of both packages.

I handle Beech-Nut Chewing Gum and Beech-Nut Peanut Butter. I know that both of these articles are made by the Beech-Nut Packing Company.

246

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I have never seen a package put out the Beech-Nut Packing Company that looked like either a scrap tobacco package or a cigarette package, and I think that anyone who would accept the Beech-Nut Scrap Tobacco or Cigarette package in place of the Beech-Nut Gum package must be crazy. I regard tobacco and cigarettes as an entirely separate class of products from chewing gum or food products. I have never known of a food products or gum concern that manufactured any tobacco products.

I sell Velvet Tobacco and Velvet Pencils, made by different companies; Argo Salmon and Argo Starch made by different companies; Jersey Bluing and Jersey

Corn Flakes, made by different companies; Mothers' Oats and Mothers' Coffee, made by different companies; Swan's Down Cake Flour and Swan's Down Sugar, made by different companies; Baker's Cocoa and Baker's Corn, made by different companies.

3247

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I wait on different parts of my grocery store myself. I do not pay much attention to what people are saying about tobacco or cigarettes.

3248

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

3249

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

250

IT IS STIPULATED by and between the parties, through their respective counsel, that if M. J. MURRAY were called as a witness on behalf of the P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is M. J. MURRAY. I am of legal age and am the owner and manager of a grocery store located at 33 Braddock Avenue, Braddock, Pa. I employ two clerks besides myself and we serve between 250 and 300 customers a day.

261

I have sold Beech-Nut Scrap Tobacco for four or five years. It is my best selling scrap tobacco. I have always known that it was manufactured by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of the Scrap Tobacco package.

I sell Beech-Nut Peanut Butter, Beech-Nut Bacon, Beech-Nut Spaghetti and Beech-Nut Pork & Beans, all of which products I know to be manufactured by the Beech-Nut Packing Company.

262

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. I have never heard of a food products company that manufactured any tobacco products. I regard tobacco and gum or food products as entirely unrelated lines of merchandise. I have never seen a package put out by the Beech-Nut Packing Company that looked like a scrap tobacco package. I think that any one who would accept a package of Beech-Nut Scrap Tobacco in the place of any of the Beech-Nut food products that I have ever handled must be crazy.

I sell Star Lobsters and Star Soap, made by different companies; Argo Salmon and Argo Starch, made by

different companies; Royal Baking Powder and Royal Bluing, made by different companies. 3253

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

I wait on different parts of my grocery store myself. I do not pay much attention to what people are saying about tobacco or cigarettes.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 3254

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 3255

3256 IT IS STIPULATED by and between the parties, through their respective counsel, that if

I. L. MILLER, Grocer, 507 E. Eighth St., Homestead, Pa.,
JULIUS WEISS, Grocer, Lincoln St., East Pittsburg, Pa.,
L. G. LAMBRIGHT, Retail Tobacconist, 927 Wood St., Wil-
kinsburg, Pa.,

FRANK ANNENDOLA, Grocer, 18 Braddock Ave., Brad-
dock, Pa.,

J. GILBERT, Grocer, 201 Third St., Braddock, Pa.,

WM. HALER, Retail Candy Merchant, 2718 Fifth Ave.,
East End, McKeesport, Pa.,

3257 GEO. BASHUR, Retail Tobacconist, 809 Fifth Ave., Mc-
Keesport, Pa.,

ABE BIBENSTEIN, Retail Tobacconist, 508 Trust Bldg.,
McKeesport, Pa.,

MORRIS WEINTRAUB, Retail Tobacconist, Locust & Hin-
gold Sts., McKeesport, Pa.,

H. E. VENSEL, Retail Tobacconist, 916 Walnut St., Mc-
Keesport, Pa.

were called as witnesses on behalf of P. Lorillard Co.,
defendant, they would each testify as follows:

Direct Examination.

3258 I am of legal age, and have for a number of years been engaged in retailing tobacco along with some other lines of merchandise.

I have handled Beech-Nut Scrap Tobacco for several years. It is a very good seller with me. I have sold Beech-Nut Cigarettes since they appeared on this market about two years ago. These cigarettes are not a good seller with me. I have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were manufactured by the Lorillard Tobacco Co.

I know that Lorillard's name is written on the front of both packages. I have known of the Lorillard Co. for a long time as one of the largest of the tobacco companies.

3259

I have handled Beech-Nut Chewing Gum and Beech-Nut Mints for several years. I know these to be products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be manufactured by the Beech-Nut Packing Company.

I do not think that either the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package looks at all like a chewing gum package. I have never known of a candy or gum concern that put out any tobacco products, and I regard tobacco and cigarettes as an entirely different class of merchandise from gum or candies.

3260

I would think that anyone who would accept a package of Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes in the place of a package of Beech-Nut Gum must be crazy.

Cross Examination.

I have handled tobacco for some years and am familiar with the different brands. I know the Lorillard salesmen who call in at my store at frequent intervals to take orders. I wait on customers in the different parts of my store and have not paid much attention to what people are saying about tobacco or cigarettes.

3261

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company

1262 products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

WEST VIRGINIA WITNESSES.

9263

IT IS STIPULATED by and between the parties, through their respective counsel, that if ALECK BOLTON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

9264

My name is ALECK BOLTON. I am of legal age and am a retail tobacco merchant, doing business at 1325 Market St., Wheeling, W. Va. I have handled Beech-Nut Scrap Tobacco for about seven years. It is my best selling scrap. I have handled Beech-Nut Cigarettes since they appeared on this market about two years ago. These cigarettes do not sell well with me. I have always known that both of these products were put out by the Lorillard Tobacco Co., and I have long known of that company as one of the largest and oldest of the tobacco concerns. I handle a great many of Lorillard's brands, such as Climax Plug Tobacco, Murad Cigarettes, Moguls, Helmars, Egyptian Deities, Sensation Tobacco and Union Leader Tobacco.

I sell Beech-Nut Chewing Gum, which is a very good seller, and which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I do not think that either the Scrap Tobacco or the Cigarette packages look at all like a gum package and I think that anyone who would accept the Beech-Nut Scrap Tobacco package or the Beech-Nut Cigarette package for the Beech-Nut Chewing Gum package must be crazy.

3265

I regard tobacco and gum as entirely unrelated classes of products.

3266

I sell Star Tobacco and Star Razor Blades, made by different companies; Velvet Pencils and Velvet Tobacco, made by different companies; Chesterfield Pipes and Chesterfield Cigarettes made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

3267

I have handled tobacco for many years and know the different brands. I buy considerable quantities from the Lorillard Co. I have a busy store. I am kept busy waiting on my trade and have not much opportunity to listen to what customers are saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing

3268 Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3269 IT IS STIPULATED by and between the parties, through their respective counsel, that if J. ELMER FREESE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3270 My name is J. ELMER FREESE. I am of legal age and am a retail tobacco merchant and have for the past sixteen years been a retail tobacco merchant. I now do business at the corner of 17th and Market Sts., Wheeling, W. Va. Besides tobacco I sell stationery, candy, books, etc.

I have sold Beech-Nut Scrap Tobacco for about seven years. It is my best selling scrap tobacco. I have always known it to be manufactured by the Lorillard Tobacco Co., which company I know to be one of the most important of the tobacco companies. I handle a great many of their brands, but I have never sold the Beech-Nut Cigarettes.

I sell Beech-Nut Chewing Gum, which is a good seller and which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company.

3271

I do not think that the Scrap Tobacco package looks at all like a gum package and I think that anyone who would accept the Beech-Nut Scrap Tobacco in place of the Beech-Nut Gum must be crazy.

I sell Velvet Pencils, Velvet Tobacco, made by different companies; Star Tobacco, Star Fountain Pens, and Star Pen Clips, all made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

3272

Cross Examination.

I have been in the retail tobacco business for many years. I have for years been buying the products put out by the Lorillard Co. I am kept pretty busy waiting on customers in my store and have not a great deal of opportunity to listen to what customers are saying. A customer hardly ever asks who makes the cigarette or tobacco he is buying.

3273

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

3274

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if THOMAS P. HAYES were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

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Direct Examination.

3276

My name is THOMAS P. HAYES. I am of legal age and am the manager of the Jas. B. McKeen Cigar Co. My headquarters are at 1209 Market St., Wheeling, W. Va., where one of the cigar stores of the McKee Cigar Co. is located. Besides this store my company owns cigar stands at the Windsor Hotel, Wheeling, W. Va., Pt. Cumberland Hotel, Cumberland, Md., Waldo Hotel, Clarksburg, W. Va., and at the Frederick Hotel, Huntington, W. Va. I spend most of my time in Wheeling and am in close contact with what goes on in the store at 1209 Market St., and at the cigar stand in the Windsor Hotel, Wheeling. I have held my present position for the past eight years. I have bought and sold Beech-Nut Scrap Tobacco since 1915, and Beech-Nut Cigarettes since they first appeared on the market about two years ago. I know both of these articles to be manufactured by the Lorillard Co. and I have long known that company to be one of the oldest and largest of the tobacco companies. I handle a great many of Lorillard's brands, the leaders among which at present are Beech-Nut Scrap Tobacco, Climax Plug Tobacco,

Union Leader Smoking Tobacco, Murad Cigarettes, 3277
Helmars, Moguls, Egyptian Dieties, etc.

I sell Beech-Nut Chewing Gum and Beech-Nut Mints and I know that these articles are put out by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers, clerks, or others to the effect, or which led me to believe that they thought the Beech-Nut Cigarettes or the Beech-Nut Scrap Tobacco to be products of the Beech-Nut Packing Company. I do not think that the Beech-Nut Gum package put out by the Beech-Nut Packing Company looks like either a scrap tobacco package or a cigarette package. I know 3278
that Lorillard's name is written on the front of both the Scrap Tobacco and the Cigarette packages.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from gum or candy. I have never known of a candy or gum concern that manufactured any tobacco products.

Cross Examination.

I have been in the retail cigar business for many years and for a long time have handled many of the brands put out by the P. Lorillard Co. I buy considerable quantities of them. I have for years known the Lorillard salesmen who have been in this district from time to time. It keeps me busy running our five stores. I divide my time between them. I have not much time to listen to what customers are saying. A customer hardly ever asks who makes the cigarettes or tobacco he is buying. 3279

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that

3280 makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

IT IS STIPULATED by and between the parties, through their respective counsel, that if J. F. REINACKER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3281

My name is J. F. REINACKER. I am of legal age and am a retail tobacco merchant, doing business at 1226 Market St., Wheeling, W. Va. In addition to tobacco, I handle such articles as candy, sodas, razor blades, pencils, etc.

I have sold Beech-Nut Scrap Tobacco for about five years and Beech-Nut Cigarettes since they appeared on this market about two years ago. I know that both of these products are manufactured by the Lorillard Tobacco Co., and I have noticed Lorillard's name written on the front of both packages.

3282

I sell Beech-Nut Chewing Gum, which is a good seller, and which I know to be manufactured by the Beech-Nut Packing Company.

I do not think that either the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarette packages look like a chewing gum package and I think that it would take a crazy man to accept either the Beech-Nut scrap tobacco or the Beech-Nut cigarette package in place of the Beech-Nut Chewing Gum package.

I have never heard more than three or four remarks, inquiries or comments among my customers or others, to the effect, or which led me to believe that they thought

the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. I told the three or four persons who did inquire of me that Lorillard made the tobacco and cigarette and that the Beech-Nut Packing Company made the gum. All of these instances occurred shortly after the cigarettes appeared on the market. 3283

I regard tobacco and gum as entirely unrelated classes of merchandise. I have never heard of a gum concern that put out any tobacco products.

I sell Chesterfield Pipes and Chesterfield Cigarettes, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3284

Cross Examination.

I have handled tobacco for many years and know the different brands. I am kept pretty busy in my store. I cannot remember any more instances than those I have mentioned of people inquiring or discussing whether the Beech-Nut Cigarettes and Scrap Tobacco were made by the Beech-Nut Packing Company. I cannot remember the names of these people or any more of the circumstances. I have made no effort to remember such occurrences and have had no reason to do so. 3285

Re-direct Examination.

If I had heard such remarks, inquiries or comments in appreciably greater number than the three or four that I have mentioned, I believe that fact would have been impressed on my mind, and that I would now remember it.

3286

IT IS STIPULATED by and between the parties, through their respective counsel, that if E. B. POTTS were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is E. B. POTTS. I am of legal age and am a grocer doing business at 10th and Main Sts., Wheeling, W. Va. I employ three clerks besides myself and my store is a rather large one on the outskirts of the business section of Wheeling.

3287

I have sold Beech-Nut Scrap Tobacco for the past six or seven years. I have always known it to be manufactured by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of the package. Beech-Nut Scrap Tobacco is a good seller with me.

I have sold Beech-Nut Chewing Gum and Beech-Nut Peanut Butter and I know that both of these articles are put out by the Beech-Nut Packing Company.

3289

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. I do not think that Beech-Nut Gum or Beech-Nut Peanut Butter looks like a scrap tobacco package, and I think that anyone who would accept Beech-Nut Scrap Tobacco in place of Beech-Nut Gum must be crazy. I regard tobacco and food products as entirely separate classes of merchandise and I have never known of a food products or gum company that made any tobacco products.

I sell Climax Tobacco, Climax Coffee and Climax Wall Paper Cleaner, all manufactured by different companies; Argo Starch and Argo Salmon, made by different com-

panies; Jersey Matches and Jersey Flour, made by different companies; Mothers Oats and Mothers Vanilla, made by different companies; Uneeda Matches and Uneeda Biscuits, made by different companies; Camel Cigarettes and Camel Dates, manufactured by different companies.

3289

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

Cross Examination.

3290

I have handled tobacco for a good many years and know the different brands. I wait on customers in all parts of my store and have not paid particular attention to what people are saying about the tobacco.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

3291

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3292

IT IS STIPULATED by and between the parties, through their respective counsel, that if W. J. KAISER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3293

My name is W. J. KAISER. I am of legal age and am a grocer doing business at 1001 Main St., Wheeling, W. Va. I employ two clerks besides myself. My store is quite a large one, measuring about 50 x 50'. I have sold Beech-Nut Scrap Tobacco for several years and I know it to be made by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of the package.

I sell Beech-Nut Chewing Gum, Beech-Nut Peanut Butter and Beech-Nut Spaghetti. I know that these products are made by the Beech-Nut Packing Company.

3294

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco to be a product of the Beech-Nut Packing Company. I do not think that any of the products of the Beech-Nut Packing Company that I handle look like a scrap tobacco package, and I would think that anyone who would accept Beech-Nut Scrap Tobacco in place of any of them must be crazy.

I regard tobacco and gum as entirely unrelated classes of products and I have never known of a food products or gum concern that manufactured any tobacco.

I sell Argo Salmon and Argo Starch, made by different companies; Uneeda Biscuits and Uneeda Matches, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods

1975

sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 329

Cross Examination.

I have handled tobacco for some years and am familiar with the brands that sell in this part of the country. I wait on customers in all parts of my store. I have not paid particular attention to what is being said about tobacco.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco, or as to whether it is made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 329

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 329

IT IS STIPULATED by and between the parties, through their respective counsel, that if E. SAYER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is E. SAYER. I am of legal age and am the manager of the Piggly Wiggly grocery store on Market St., Wheeling, W. Va. This is a large store where about 400 customers a day are served.

3298 I have bought and sold Beech-Nut Scrap Tobacco for the past six or seven years and I have always known it to be manufactured by the Lorillard Tobacco Co. I have sold Beech-Nut Cigarettes since they appeared on this market and have always known that this product was also made by the Lorillard Co. I know that Lorillard's name is written on the front of both packages. The Beech-Nut Scrap Tobacco is a good seller, but Beech-Nut Cigarettes do not sell well with me. I handle a number of the products of the Beech-Nut Packing Company, among them, Beech-Nut Chewing Gum, Mints, Peanut Butter and Beech-Nut Bacon. I do a good business in all of these articles.

3299 I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be products of the Beech-Nut Packing Company. None of the packages put out by the Beech-Nut Packing Company that I handle looks to me like a scrap tobacco package or a cigarette package. I regard food products and candies and gum as entirely separate lines of merchandise from tobacco or cigarettes and I have never known of a food or candy concern that manufactured any tobacco products.

3300 I sell White House Coffee, White House Vinegar and White House Margarine, all made by different companies; Uneeda Matches and Uneeda Biscuits, made by different companies; Gold Medal Matches and Gold Medal Flour, made by different companies; Franco-American Coffee and Franco-American Spaghetti, made by different companies; Log Cabin Syrup and Log Cabin Kisses, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different

goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 330

Cross Examination.

I have handled tobacco for a good many years and have bought considerable quantities from the Lorillard Co. I wait on customers in all parts of my grocery store. I have not paid particular attention to what is going on in the tobacco section or what people are saying there.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes or as to whether they are made by the some company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 330

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory. 330

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3304

IT IS STIPULATED by and between the parties, through their respective counsel, that if P. P. NAUFEL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3305

My name is P. P. NAUFEL. I am of legal age and have been in the retail tobacco and confection business for the past seven years. I own and manage three retail candy and tobacco stores, all located in the business section of Wheeling, W. Va. I spend most of my time in one of these stores, which is 1608 Market St., Wheeling, W. Va., just across the street from the B. & O. Railway station. My stores average about 300 customers a day. In the store at 1608 Market St. I employ one clerk and spend most of my time waiting on the trade along with him.

3306

I have sold Beech-Nut Scrap Tobacco ever since I have been in this business, and it is a good seller. I have sold Beech-Nut Cigarettes ever since they appeared on this market, about two years ago. These cigarettes have not sold well with me. I know that both of these products are made by the Lorillard Tobacco Co. I know that Lorillard's name is written on the front of both of these packages.

I sell Beech-Nut Chewing Gum and Beech-Nut Mints, which I know to be products of the Beech-Nut Packing Company. I do not think that either the Beech-Nut Gum or Mint package looks like either a scrap tobacco package or a cigarette package and I would think that anyone who would accept Beech-Nut Scrap Tobacco or Cigarettes in place of Beech-Nut Gum or Mints must be crazy.

I have never heard any remarks, inquiries or comments among my customers or others to the effect,

or which led me to believe, that they thought the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes to be the product of the Beech-Nut Packing Company.

3307

I regard candy and gum as entirely different classes of merchandise from cigarettes and tobacco. I have never heard of a candy or gum concern that manufactured any tobacco products.

I sell Sunshine Cigarettes and Sunshine Biscuits, made by different companies

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial.

3308

Cross Examination.

I have handled tobacco for years and have bought considerable quantities of the brands put out by the Lorillard Co. It takes all my time looking after my three stores. I have not had a great deal of opportunity to listen to what customers are saying. A customer hardly ever asks who makes the cigarette or tobacco he is buying.

3309

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any.

310 *Re-direct Examination.*

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

IT IS STIPULATED by and between the parties, through their respective counsel, that if L. M. DORSEY were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

311 *Direct Examination.*

My name is L. M. DORSEY. I am of legal age and am a druggist. I am the manager of the Peerless Drug Co. at 1134 Market St., Wheeling, W. Va. My store is a large one and I carry in addition to drugs such lines as stationery, toilet articles, perfumes, candy, and tobacco. I employ three clerks besides myself in this store.

312 I have handled Beech-Nut Cigarettes since they appeared on this market about a year and a half ago. I know that this cigarette is made by the Lorillard Tobacco Company. I know that Lorillard's name is written on the front of the package.

I sell Beech-Nut Chewing gum and Beech-Nut mints, and I know that these products are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nuts Cigarettes to be a product of the Beech-Nut Packing Company. I do not think that the Beech-Nut Cigarette package looks like a gum package and I do not see how anyone could possibly accept Beech-Nut Cig-

arettes in place of Beech-Nut Gum. I regard cigarettes and chewing gum as entirely separate classes of products and I have never heard of a gum concern that manufactured any cigarettes. 3313

I sell Ideal Brushes and Ideal pens, made by different companies; Star Shaving Brushes and Star Batteries, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is irrelevant and immaterial. 3314

Cross Examination.

I wait on customers in all parts of my drug store. I have not paid much attention to what was going on at the tobacco counter or what people were saying about cigarettes. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Cigarettes, or as to whether they are made by the same company that makes the Beech-Nut Gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I do not remember any. 3315

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, or such would have been impressed on my memory.

3316

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

BEECH-NUT PACKING COMPANY,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>		
P. LORILLARD COMPANY,	}	
Defendant.		

3317

State of Illinois, }
County of Cook. } *ss. :*

I, LURLINE BULLWINKEL, a notary public within and for the County of Cook and State of Illinois, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing stipulated depositions of:

3318

Carl A. Paulsen	M. S. Winerlack
Frank Goldstein	O. H. Olsen
L. S. Jones	A. Thompson
Charlie Friedman	A. Christianson
D. H. Kropp	C. Biasetti
D. A. Rogoff	J. W. Corey
A. Henderickx	E. S. Gulyear
Morris Gold	M. E. Parthemas
M. W. Masor	John M. Monteath
A. W. Schreibel	L. J. Wilson
C. H. Kappmeyer	Fred Rester
Wm. T. Vanvactor	J. P. Shedd
Harry Bernard	Sam Carnaggio
Jake Kurland	M. L. Moore
C. P. Burdick	S. A. Sabbagha
R. A. Carter	R. L. Burnett
J. M. McGowan	A. B. Tomlinson

Norman A. Lynch	J. F. Drake	3319
James A. Henderson	J. J. Bates	
T. A. Walker	R. L. Waldrop	
H. C. Chandler	C. W. Ridgway	
John Gross	P. R. Jameson	
D. W. Holbrook	John D. Ashmore	
Dean S. House	J. O. Sloman	
C. W. Kirby	T. J. Sayle	
H. L. Grant	F. C. Calder	
I. H. Rider	Roy McDonald	
Allison James	W. E. Douglas	
F. A. Smithdeal	A. R. Smith	
E. W. Hanron	F. W. Geiss	3320
E. I. Fater	J. Blaufield	
C. F. Crawford	E. W. Spears	
Geo. H. Bell	L. D. Armstead	
M. O. Willis	C. E. McCarthy	
E. H. Higgins	R. V. Harp	
W. H. Martin	P. J. Rosswog	
F. Rogers	M. Borenstein	
Byrl Bullard	A. J. Fleischauer	
L. M. Lavin	A. Gorenstein	
Emmett Howard	Henry Rivlin	
J. E. Craven	Chas. F. Smith	
L. R. Bramblett	J. E. Detwiler	3321
Louis Evers	Louis Huck	
F. Odell	A. Petty	
H. A. Taylor	A. Kidner	
Charlie Bradshaw	Jos. H. Rosswog	
E. R. Turner	M. J. Farrell	
Wm. H. J. Meyer	Wm. C. Dicko	
W. P. Schaefer	S. Samuels	
J. G. Block	Max Seltzman	
H. G. Saam	A. W. Meyer	
J. E. Cobb	M. J. Murray	
H. R. Petty	I. L. Miller	
A. De King	Julius Weiss	

3322	W. B. Zulwood	L. C. Lambright
	Bertha Rosenfield	Frank Annendola
	J. L. Shinfessel	J. Gilbert
	Wm. Hales	Thomas P. Hayes
	Geo. Bashus	J. F. Reinacker
	Abe Bibenstein	E. B. Potts
	Morris Weintraub	W. J. Kaiser
	H. E. Vensel	E. Sayer
	Aleck Bolton	P. P. Naufel
	J. Elmer Freese	L. M. Dorsey

3323 were taken on behalf of the defendant, P. Lorillard Company, pursuant to notice and by agreement of counsel before me at 38 South Dearborn Street, Chicago, Illinois, on Friday, February 16th, 1923; that said stipulated depositions of said witnesses were taken down in short-hand by me at the joint dictation of the counsel of the parties hereto, and thereafter reduced to typewriting by me; that the plaintiff, Beech-Nut Packing Company, was represented by its counsel, H. McClure Johnson, and that the defendant, P. Lorillard Company, was represented by its counsel Richard B. Cavanagh and Thomas L. Preston; that the afore-said counsel for the respective parties agreed to stipulate the said testimony of the said witnesses; that the

3324 counsel of both parties read over and approved and agreed to the stipulated testimony after it was written out.

I am not connected by blood or marriage with either of the parties hereto, or interested either directly or indirectly in the matter in controversy.

Witness my hand and seal as such notary public and Special Examiner at Chicago, Illinois, this 14th day of March, A. D., 1923.

LURLINE BULLWINKEL,

[Notary Public.

My commission expires May 22nd, 1923.

(Seal)

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	}	In Equity No. 3056.
Plaintiff,		
<i>vs.</i>		
P. Lorillard Co.,		
Defendant.		

Testimony taken on behalf of the P. Lorillard Co., Defendant, at Hartford, Connecticut, this 6th day of August, 1923, pursuant to agreement and before Herbert J. Krause, Notary Public, in and for the state of Connecticut, acting as Examiner by consent, formal notice of the production of these witnesses being waived;

3326

The following counsel being present:

CHARLES C. BULKLEY, Esq., and H. McCLURE JOHNSON, Esq., on behalf of the plaintiff; and

RICHARD B. CAVANAGH, Esq., and THOMAS L. PRESTON, Esq., on behalf of the defendant.

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WILLIAM J. DOLAN, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Preston, as follows:

Q. 1. Will you please state your name, age, residence and occupation?

A. William J. Dolan, age 60, 27 Wethersfield Avenue, Hartford, Connecticut, occupation cigar dealer and cigar manufacturer.

328 Q. 2. How long have you been in the tobacco business?

A. Since 1876.

Q. 3. Have you been in the retail tobacco business all that time?

A. No, I have been in the wholesale tobacco business. That is, a wholesale cigar manufacturer for myself since 1903.

Q. 4. How long have you been in the retail part of the business?

A. I have been here eight and one-half years.

329 Q. 5. You have been eight and one-half years at this location?

A. It will be nine years next December.

Q. 6. Mr. Dolan, do you sell Beech-Nut Scrap tobacco like the package I now show you? (Mr. Preston showing witness package of Beech Nut Scrap Tobacco).

A. I always sell it.

Q. 7. Can you say how long, approximately, you have been handling that product?

A. Since I have been here in the business; since there has been any call for Beech-Nut Scrap; since it was first put on the market, whenever that was.

330 Q. 8. Do you sell Beech-Nut cigarettes like this package I show you? (Mr. Preston showing witness package of Beech-Nut cigarettes.)

A. Yes, when I can get them.

Q. 9. Do you know what company manufactures Beech-Nut Scrap Tobacco and Beech-Nut cigarettes?

A. Yes, sure, the P. Lorillard Co.

Q. 10. Do you handle Beech-Nut Mints and Beech-Nut gum?

A. Yes.

Q. 11. Do you know what company manufactures those products?

A. Yes, the Beech-Nut Packing Company.

3331

Q. 12. Were you ever under the impression that Beech-Nut cigarettes or Beech-Nut Scrap tobacco were made by the Beech-Nut Packing Company?

A. No, never.

Q. 13. Did you ever hear any comments, inquiries or remarks from your customers or others which led you to believe, or to the effect that Beech-Nut Scrap tobacco and Beech-Nut cigarettes were made by the Beech-Nut Packing Company?

A. No.

Q. 14. Do you regard confections and gum as in any way related to tobacco products or do you regard them as an entirely separate class of products? 3332

A. A side line I should call it. I keep it for accommodation. If a man smokes, usually he wants to chew some gum so I sell Beech-Nut gum.

Q. 15. Did you ever hear of a food products company that manufactured any tobacco products?

A. Not to my knowledge.

Q. 16. Did any Lorillard salesman who ever sold any Beech-Nut tobacco products to you ever make any statements that left you under the impression that there was any connection between the Beech-Nut Packing Company and the P. Lorillard Co.? 3333

A. No, never.

Q. 17. Did you ever see a package put up by the Beech-Nut Packing Company that looked like either a Beech-Nut cigarette package or a Beech-Nut Scrap Tobacco package?

A. No.

Q. 18. Mr. Dolan, would you just name off a few of the articles that you carry in your store in addition to tobacco and confections?

A. Why, yes, books, razor blades, fruit punch—

334 --grape, orange—and chewing gum and pipes, tricks and novelties, and dice.

Mr. Preston: I think that is all. Mr. Johnson would like to ask you a few questions.

(Direct Examination closed).

Cross Examination.

By Mr. Johnson:

335 X-Q. 1. What is the street address of your tobacco store?

A. 22 Park Street.

X-Q. 2. Hartford, Connecticut?

A. Yes.

X-Q. 3. Have you a factory in connection with your business?

A. A cigar factory, yes.

X-Q. 14. Where is that?

A. Right in the rear.

X-Q. 5. About what proportion of your business is retail business?

A. All of it, I don't do any wholsale business.

336 K-Q. 6. What do you manufacture?

A. Cigars.

X-Q. 7. But you retail a large and various line of different kinds of things?

A. Yes, I manufacture different kinds of cigars. I quit going out soliciting trade for wholesale after Prohibition, the last three years or so.

X-Q. 7. Just roughly what is the size of the retail part of your shop without the factory; approximately the number of feet?

A. I should say it was about 15 feet by 10 feet.

X-Q. 8. How many employes do you have in the front of your shop where you sell to your customers? 3337

A. Two.

X-Q. 9. One beside yourself?

A. Yes.

X-Q. 10. How many are on duty at a time.

A. Sometimes two and sometimes one.

X-Q. 11. Are you in the business section of the city?

A. I think so. I think it is one of the busiest sections of the city.

X-Q. 12. About how many customers a day do you take care of?

A. I couldn't tell you. I have never kept track of that. I know my average receipts for the last year here were in the neighbourhood of \$25,000. 3338

X-Q. 13. Could you make a pretty close approximation of the number of customers you have per day?

A. I couldn't attempt to, I couldn't attempt to. I could only tell you about the cash receipts. I have got detail enough without getting the number of customers.

X-Q. 14. Are you kept pretty busy waiting on customers during certain parts of the day?

A. Yes, between six and seven in the morning because this is a transfer point—between six and seven in the morning and between five and six in the afternoon the men are going to and coming from work, and I am busy waiting on customers and making change in the store. A man will get off a car and come in and he wants something quick so that he can get his next car, and I have got to get busy and do it quick. 3339

X-Q. 15. Do you do most of your business at those two rush hours of the day?

A. I do a certain business right through the day, transient business, and, of course, there isn't so much of that.

X-Q. 16. Have you much time to talk to customers?

A. "How do you do?"; "It is a nice day"; "How

3340 do you like the weather." If one person says: "It is hot" I say: "Yes," and if he says: "It is cold" I say the same thing. I haven't time for anything else.

X-Q. 17. Does a customer, as a rule, ask you who makes an article of tobacco or cigarettes that he is buying?

A. They don't care as long as the cigarettes suit them. They don't know if Liggett & Myers make Lucky Strikes or who makes Camels.

X-Q. 18. Would you say it is the brand of the cigarette or the tobacco that sells it?

3341 A. I should say so, yes. If a man gets used to a kind, he calls for it.

X-Q. 19. Did I understand you to say on your direct examination that you have been in the tobacco business for something like forty-five years?

A. Since 1876 I have been in the cigar business. I started in it as a kid and I am a kid yet.

X-Q. 20. How long have you handled tobacco and cigarettes?

A. At odd times I have handled it. Steadily since I have been here, of course.

X-Q. 21. About how long is that?

3342 A. Eight years—nine years next December the 12th. Then I was in business before further down on Maple Avenue for about two years where I had retail handling a year and a half or so, and then I have handled tobacco, of course, as a boy. In 1876 I worked in a cigar store just like this.

X-Q. 22. Have any people ever asked you—have either customers or anyone else ever asked you who made Beech-Nut Scrap Tobacco?

A. Not to my knowledge.

X-Q. 23. Or who made the Beech-Nut cigarettes?

A. No.

X-Q. 24. Has any one made any comment or inquiry as to whether Beech-Nut Scrap Tobacco or Beech-Nut

cigarettes were made by the same people that make the Beech-Nut gum and Peanut Butter, and so forth? 3343

A. No.

X-Q. 24. Have you made any attempt to remember any such comments or inquiries?

A. I never knew of anybody to ask the question. They come in and ask for Beech-Nut cigarettes and Beech-Nut Gum and Beech-Nut tobacco.

X-Q. 25. Did any one ask you to remember any such inquiries or comments?

A. No.

X-Q. 26. But you have been pretty busy waiting on the counter in your store, haven't you, during those hours. Otherwise it is just an in and out trade? 3344

A. Yes.

X-Q. 27. When you say you haven't heard any such inquiries or comments you mean, don't you, that you don't remember having heard any?

A. I never heard any to my knowledge.

X-Q. 28. How long have you been buying Lorillard tobacco products?

A. Ever since I have been in business. I sold Lorillard tobacco products when I was a kid.

X-Q. 29. Do you know the Lorillard salesmen in Hartford? 3345

A. Yes, sure I know them by hearsay.

X-Q. 30. How long have you known Mr. Hallisey?

A. Since he has been travelling for Lorillard. He took Danny Shea's place, I believe.

X-Q. 31. Have you known the Lorillard salesmen for a good many years here?

A. Since I have been here. Of course I have been buying tobacco from them for eight or pretty nearly nine years.

Mr. Johnson: That is all.

(Cross Examination closed.)

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Re-direct Examination.

By Mr. Preston:

R-D Q. 1. Mr. Dolan, will you state whether or not, if you had heard any considerable number of remarks, inquiries or comments from your customers which indicated any confusion on their part between the Beech-Nut Packing Company and the P. Lorillard Co., you believe you would have remembered them or they would have been impressed on your mind—if you had heard a great many?

3347

A. If I had heard a great many, sure it would have been impressed on my mind. I don't remember having heard them at all.

R-D Q. 2. Do you sell Star tobacco?

A. Yes.

R-D. Q. 3. Do you sell Star Shaving Brushes?

A. Yes.

Mr. Johnson: The last two questions objected to as incompetent, immaterial and irrelevant.

R-D Q. 4. Will you state whether or not Star Shaving Brushes and Star Tobacco are made by the same company?

3348

A. I don't think so.

R-D Q. 5. Do you sell Saratoga Chips here too?

A. If a man comes in and asks for them, I know very well he isn't after potatoes. I give him what I have, Saratoga chips.

R-D Q. 6. Saratoga Chips is a tobacco brand?

A. Sure, I got it here. They are made by the United States Tobacco Co.

Mr. Johnson: This line of questioning is objected to as incompetent, immaterial and irrelevant. 3349

(Re-direct Examination closed).

(Deposition closed).

(Signature of witness waived.)

WILLIAM H. NORTON, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Cavanagh, as follows: 3350

Q. 1. Please state your name, age, residence and occupation?

A. William H. Norton, 37, Norwich, Connecticut, salesman.

Q. 2. Salesman for what concern?

A. The P. Lorillard Co.

Q. 3. How long have you been connected with the P. Lorillard Co.?

A. It will be two years the 29th of this month.

Q. 4. What line of goods do you sell for P. Lorillard Co.?

A. All their lines.

Q. 5. What are they?

A. B. L. tobacco, chewing tobacco, both dark and light; Mechanics' Delight, plug; Climax, plug; Red Cross, plug; and B. L. Cut Plug in packages; Union Leader, package; Union Leader, tins; Sensation, package; Beech-Nut Chewing Tobacco.

Q. 6. What cigarette brands do you sell?

A. Helmars, Murads, Moguls, Deities, and Beech-Nut.

Q. 7. What territory do you cover?

352 A. The counties of Tolland, New London and that other one north of New London—I can't think of the name of it—including New London, Willimantic, Norwich, Danielson, Putnam and other towns within that county.

Q. 8. You work in Connecticut?

A. I work in Connecticut, not outside of it, all the State of Connecticut.

Q. 9. You have mentioned Beech-Nut Chewing tobacco and Beech-Nut cigarettes. How long have you been selling these Beech-Nut brands for the Lorillard Co.?

353 A. I started out the first four months—my first four months was entirely on Beech-Nut cigarettes. Commencing January 2nd, 1922, I have been selling all these other brands I have mentioned.

Q. 10. Did I understand you to say you have sold both the Beech-Nut Chewing tobacco or Scrap, and the Beech-Nut cigarettes in your territory?

A. Yes.

Q. 11. And you are still selling these brands?

A. Yes, sir.

354 Q. 12. Will you just tell us, in your own way, what practice you followed or what selling procedure or selling talk you used in selling the Beech-Nut brands and the other brands you have mentioned?

A. In entering a store, I always let them know who I represented, P. Lorillard Co., Inc., and looked at the shelves to see what brands they carry of ours and what brands I can put in that they haven't got, and these brands are the brands I have just mentioned here that I am selling and carry in my car, ready for delivery.

Q. 13. You say you carry them in your car, ready for delivery?

A. Yes, most of them.

Q. 14. Do you sell to the wholesalers?

A. No, the retailers. I buy from the wholesalers for cash and sell to the retailers for cash. 3355

Q. 15. I don't know if I exactly follow your procedure in that respect. Do you call on the retail trade alone?

A. All retail, no wholesale.

Q. 16. When you call on a retailer to sell a brand, say of Beech-Nut Scrap tobacco, and he gives you an order, what do you do?

A. I go out to the team and deliver the tobacco to him and give him a receipt of the order on a P. Lorillard blank, and I sign my name on it, at the bottom of the receipt. That is a receipt for his cash less the discount. 3356

Q. 17. Can you produce one of those blank receipts?

A. I have got one here now that I can give you that I am going to deliver now to a dealer down in New Haven for goods I have sold him. (Witness produced yellow paper slip from his pocket and handed it to Mr. Cavanagh.)

Q. 18. Whose name appears at the top of that receipt?

A. P. Lorillard Co., Inc., New York. That is at 119 West 40th Street.

Q. 19. I understand that in your practice you always give a customer, a retailer, one of these receipts when he makes a purchase? 3357

A. Positively. We have to send a copy of the sale to New York. We send the tissue paper copy and keep the white receipt we make out ourselves, as a record for the business of the day, which we have to report in on a big report book and send it in every night to New York, together with the tissue sheet, showing our signature on it and showing that we have made that sale, so as to make that matter clear.

3358 Q. 20. How about the customer. The customer gets one slip?

A. Yes, the yellow slip, and we keep the white slip.

Q. 21. And the third, the tissue sheet, you send to the New York office?

A. Yes.

Q. 22. In your visits to the trade, and bearing in mind particularly the Beech-Nut brand, both Scrap Tobacco and cigarettes, have you ever heard of any comments, inquiries or questions which would lead you to believe that the trade or members of it, thought that this Beech-Nut tobacco was made by the Beech-Nut

3359 Packing Company, the same people who make the gum and food products?

A. Never.

Q. 23. I understand you are in this territory, introducing the Beech-Nut cigarette?

A. Yes, sampling and selling and advertising.

Q. 24. What kind of advertising, what do you mean by advertising?

3360 A. Posters with a picture of the box sticking out that we tacked up on buildings, and cards; some about three feet long and about nine inches wide, and some there and a half feet long and three and a half feet wide, and metal signs, yellow metal signs. We would put them on the windows of a store or in the stores or on the brick outside; wherever we could.

Q. 25. Wherever you were selling the goods?

A. Wherever I was selling the goods.

Q. 26. So far as you know, the name of what company appeared on the signs?

A. P. Lorillard Co., Inc.

Q. 27. I understand you started with P. Lorillard Co. about what date?

A. August 29th, it will be two years the 29th of this month.

Q. 28. 1921?

3361

A. Yes.

Q. 29. Under whose supervision were you and who was your district manager then?

A. Mr. William Roney.

Q. 30. Where was he located?

A. Boston. He is now the New England manager of the company.

Q. 31. Did you receive any instructions from Mr. Roney or any one your superior at that time as to how to introduce the Beech-Nut cigarette?

A. I was first sent to Worcester under Mr. F. E. Roster. He was the crew manager and that is the line of talk I was given by him, sometimes once a week and sometimes two or three times a week at the hotel where we were stopping and where we were sent down into the cellar every morning and given this talk together, on advertising. He instructed us, when we went into a place, to say we represented the P. Lorillard Co. and to represent the brand we carried because at that time we could take orders for any kind we wanted to, but we were introducing the Beech-Nut cigarette.

3362

Q. 32. So you really were known as the missionary or introducer?

A. First I was sent out by Mr. Roster and instructed to say that we represented the P. Lorillard Co. and that we were 161 or 162 years in business, and that we were selling and sampling and advertising Beech-Nut cigarettes, and we would have a package in our hand. He instructed me in that way, and I was three days with him, and I used that system for four months.

3363

Q. 33. You never represented your products as made by the Beech-Nut Packing Company, did you?

3364 A. Never. I always said I represented the P. Lorillard Co. of New York, the cigarette manufacturers.

Mr. Cavanagh: I think that is all.

(Direct Examination Closed.)

Cross Examination.

By Mr. Bulkley:

3365 X-Q. 1. I believe you said that Mr. Roney instructed you to exercise care in representing yourself to be a representative of P. Lorillard Co., is that right?

A. Mr. Roney didn't.

X-Q. 2. Who was it?

A. I said Mr. Roster. Mr. Roney sent me out under Mr. Roster. He was the crew manager.

X-Q. 3. What did he say to you, if you remember, in substance, in connection with it?

3366 A. He directed me to call at the store as a representative of P. Lorillard, Inc., advertising, sampling and selling the Beech-Nut cigarette, and at the same time mention our brands of tobacco, such as B. L. We could take orders for any of that stuff but only orders through the jobber, and the only thing we carried was the cigarette in our pack and that was to be opened up to show to the trade to let them see the cigarettes.

X-Q. 4. Did he tell you, in connection with the sale of the Lorillard products of the Beech-Nut brand that you should exercise care to see to it that you always let the purchaser know that you represented the P. Lorillard Co.?

A. Yes, sir, positively.

X-Q. 5. Did he give you that caution more than once?

A. Sometimes three times a week. Not to me alone 3367
but to eighteen of us standing together.

X-Q. 6. Did you go together, you salesmen?

A. We would start out together. If we came to
Hartford there would be eighteen of us together, that
is, at the same hotel, but then we would get different
districts to cover and then we would be separated in
branches, three fellows going to a town like Manchester,
three to Glastonbury, and so forth, and then we would
be separated again and sent to different places, and
then we would come to the next big city and be all
together again, like Bridgeport or New Haven, and the
same thing done, but we would always get our instruc- 3368
tions from this one man before starting out.

X-Q. 7. That is, Mr. Roster?

A. Mr. Roster, and he would work with us. He
would work with me one day, perhaps he would be with
me four days, but he would be with each fellow one day
to see how he went and acted.

X-Q. 8. Did you ever hear of any questions being
raised with reference to the use of the words "Beech-
Nut" in connection with the sale of the products of the
P. Lorillard Co. at any time?

A. You mean in the store?

X-Q. 9. Generally with reference to the question 3369
having been elicited with reference to the use of the
words: "Beech-Nut"?

A. No, sir.

X-Q. 10. Mr. Roster never told you anything about
that, did he?

A. No, sir.

X-Q. 11. But he was quite careful, I understand you
to say, to tell you always, when you sold this Beech-
Nut tobacco, to represent yourself as selling in behalf
of the P. Lorillard Co.?

A. That is, the Beech-Nut cigarette, not the tobacco.

3370 X-Q. 12. Did he ever tell you to be careful in the sale of the Beech-Nut tobacco; to represent yourself as being a representative of the P. Lorillard Co.?

A. I was only working on the cigarettes so I could only act on the cigarettes.

X-Q. 13. You never sold any Beech-Nut tobacco?

A. I sold plenty of it but not at that time. Since January, 1922, I sold tons of it.

3371 X-Q. 14. In connection with the sale of Beech-Nut tobacco manufactured by the P. Lorillard Co., did anyone your superior give you instructions with reference to the exercise of care in always representing yourself as being a representative of the P. Lorillard Co.?

A. No, I got no instructions then, but I used the same methods only in more brands than I am selling now, and in my district they always know me because my car has the Lorillard Co.'s name on it. It has "B. L." on one side, "Union Leader" on the other, and "Climax" on the rear.

3372 X-Q. 15. Now then, I understand that although your superior did instruct you to be careful to represent to every one that you were a representative of the P. Lorillard Co. in the sale of the cigarettes, you never did receive any such instructions in connection with the sale of the tobacco at any time, is that right?

A. Not in this State. I came to this State under another manager and was sent from Boston as a man capable of going through the work here, and I used the same methods in working here as I did in Boston under the Beech-Nut crew.

X-Q. 16. That doesn't quite answer my question. It was simply as to whether or not you had been cautioned in the sale of the tobacco—Beech-Nut tobacco—never to represent yourself to be a representative of the Beech-Nut Company?

A. My first words were that I represented the Loril-

lard Co., Inc., New York. I never mentioned the Beech-Nut Company. 3373

X-Q. 17. That is not quite the point as yet. I simply ask whether at any time you were instructed to exercise care in representing to every one that you are a representative of the P. Lorillard Co. in the sale of the Beech-Nut tobaccos. Were you ever so instructed by any of your superiors at any time?

A. I was instructed, as I testified, in Boston, time and again, to be sure and say that I represented the P. Lorillard Co., New York.

X-Q. 18. And that applied either to the sale of the tobacco or to the sale of the cigarettes? 3374

A. I was then selling cigarettes.

Mr. Bulkley: That is all.

Cross Examination (Cont'd.)

By Mr. Johnson:

X-Q. 19. How long have you been in the tobacco business altogether?

A. Two years the 29th of this month, the 29th of August.

X-Q. 20. You have been with the Lorillard Co. all your years of active experience? 3375

A. Yes.

X-Q. 21. You haven't been with the Lorillard Co. previous to that in any other state?

A. No.

X-Q. 22. When was the Beech-Nut Scrap Tobacco put on in this Connecticut territory?

A. Long before I came here. I don't know how long. I came to Connecticut—just working in the State of Connecticut—I came here to work January 2nd, 1922.

3376 X-Q. 23. Where were you before that?

A. Going all through Massachusetts with a crew with the Beech-Nut cigarettes.

X-Q. 24. Working out of where?

A. Out of Boston. Boston is the home office and I travelled Massachusetts, Rhode Island and Connecticut.

X-Q. 25. When was the introductory campaign started on the Beech-Nut cigarette in this territory?

A. When was it started?

X-Q. 26. Yes?

A. It was before I went to work. I went to work in August. I don't know just when it started.

3377 X-Q. 27. In August of what year?

A. 1921.

X-Q. 28. Was the introductory campaign on the Beech-Nut cigarette in progress when you entered the employ of the P. Lorillard Co.?

A. Yes, sir.

X-Q. 29. How long did it continue after you came with them?

A. Until December 22nd, I think, of that year when we went on our vacations.

X-Q. 30. December 22nd, 1921?

3378 A. Either the 21st or 22nd. Our vacation was less than a week before Christmas and the full week until the day after New Year's.

X-Q. 31. Did you work on the introductory campaign of the Beech-Nut cigarette from that time under the employ of the company—from the end of August until December 22nd, 1921?

A. Yes, sir.

X-Q. 32. How many men worked with you during that introductory campaign on Beech-Nut cigarettes?

A. From eighteen to twenty-one. Sometimes the crew was eighteen or nineteen or twenty or twenty-one. Never over twenty-one.

X-Q. 33. Did you know any of those men?

3379

A. Every one of them. I got acquainted with them working with them.

X-Q. 34. Were any of them new in the tobacco business the same as you were?

A. That I couldn't tell. Some of them were but I couldn't speak for all of them.

X-Q. 35. Some of them were new men and not familiar with the selling of tobacco at that time?

A. I couldn't tell anything about that. I don't know if they had sold tobacco or anything else. I simply know my own business.

X-Q. 36. Was this a special crew hired for this introductory campaign on Beech-Nut cigarettes?

3380

A. That I couldn't tell you. I myself tried for the job and was hired by Mr. Roney, and he sent me out on his crew. There was other work to be done but he put me on his crew.

X-Q. 37. Then all of these eighteen to twenty-one men you referred to concentrated on the sale of Beech-Nut cigarettes during that time from August to December of 1922—I mean 1921?

A. Yes

X-Q. 38. Did the membership of that crew change while you were with it?

3381

A. Sometimes a fellow got through with the company and sometimes some one else was hired.

X-Q. 39. Do you know of any of them being discharged because they were unsatisfactory?

A. That I couldn't tell you. They would not have let me know.

X-Q. 40. Some of them would disappear now and then and new men would appear?

A. In a couple of cases; I guess two or three. Not over three.

X-Q. 41. Did you hear any talk about any of them

3382 being cautioned as to their method of selling Beech-Nut cigarettes?

A. Every one of them. We would get it when we were all together in a hotel. For instance, while in a hotel in Bridgeport the head man had the fellows downstairs with samples of advertising sent from Boston and he would give us our instructions and advertising and sent us out to different districts to work and then we would come back at night and report.

3383 X-Q. 42. At any of those times when you were receiving instructions from Mr. Roster, did he ever tell you there was any special reason for your being careful in your methods of selling Beech-Nut cigarettes?

A. No, no.

X-Q. 43. Did you ever receive any letters from your superiors in the P. Lorillard Co.—letter or circular—calling your attention to the fact that they wanted you to be careful to avoid having it appear that the Beech-Nut cigarettes were put out by any other company than your own?

A. No.

X-Q. 44. You never received any such letter or circular?

3384 A. I received, just as I said, the instructions from this crew manager.

X-Q. 45. That was by word of mouth?

A. That was by word of mouth. We got those orders three times a week; every week we got those same instructions.

X-Q. 46. But you never received any written instructions to that effect?

A. No. Mr. Roster would work with me a day and he would stop and talk to me as I have already said.

X-Q. 47. Were there any competitions in that introductory campaign on Beech-Nut cigarettes to see what member of your crew would sell the most?

A. No, no competition.

3385

X-Q. 48. Or any bonuses offered for the largest sale of Beech-Nut cigarettes?

A. We got a bonus for the sales over the six months previous. If they were better we would get a certain percentage of it—if the sales increased.

X-Q. 49. You got a bonus on the increased sales?

A. We got a bonus on the increased sales.

X-Q. 50. Did you receive any written announcement of such a bonus?

A. Yes.

X-Q. 51. Was there any caution in connection with those offers as to the way you should put forward the Beech-Nut cigarettes?

3386

A. No, sir.

X-Q. 52. Have you ever taken part in any other introductory campaign on tobacco or cigarettes?

A. Yes, sir.

X-Q. 53. What were they?

A. Comet tobacco. That was six months ago. I introduced it all through my district, putting it in seven out of ten stores introductory.

X-Q. 54. How did the first sales of Comet compare with the introductory sale of the Beech-Nut cigarettes?

A. Well, not so good. I might add that at the time of our campaign, when we started the cigarettes, we were offering the cigarettes 20 for 15 cents in competition with cigarettes like Camels or Lucky Strikes, 20 for 20 cents. Comet was 10 cents a package and all other packages were 10 cents so we didn't have a chance to introduce so much of the tobacco in my opinion.

3387

X-Q. 55. Does the P. Lorillard Co. have its name on all of its products that you have sold?

A. As far as I know—I beg your pardon, not all of them. The Turkish cigarettes have "S. Anargyros" on them. We produce the brand.

3388 X-Q. 56. What are the names of some of those brands that bear that name. Just name them to me?

A. Moguls, Murads, Helmars, Egyptian Dieties, Anargyros Brush Ends—it is a hand made cigarette. There are others I am not familiar with that are sold, high priced cigarettes.

(Answer read by the stenographer at the request of Mr. Bulkley.)

X-Q. 57. Then the P. Lorillard Co. does not feature its name on those brands of cigarettes, is that right?

3389 A. Yes. I don't think it can. I don't know much about it but I think that is the agreement. That name was to be on all the brands of Turkish and Egyptian cigarettes.

X-Q. 58. Are those brands you have named an important group of the Lorillard Products?

A. Very important.

X-Q. 59. Do they have large sales?

A. Very large.

X-Q. 60. In your experience, Mr. Norton, in selling tobacco and cigarettes, would you say that it is the brand name that sells the article?

A. Well, which article?

3390

X-Q. 61. Does the consumer ask for a certain brand of cigarettes or tobacco?

A. Well, I have gone by a store with my car, driving fairly fast, and have been hollered at to stop and I came back and had them ask me if I had a couple dozen packages of Beech-Nut Chewing Tobacco in my car and I said: "Yes" and opened it up—I always carry two gross of it with me, and I opened it up and delivered it, and gave them such a receipt as I showed you.

X-Q. 62. Do you know personally a great many of your customers—dealers?

A. I do now. They were all new to me when I took that district. 3391

X-Q. 63. When a man would stop you that way, he would know you were the Lorillard man that was selling those things?

A. Yes, by the car, he could tell by the car. They all know—the dealers all know our brands; especially in the district I work in our brands are leading sellers over all. That is, Beech-Nut Chewing, Union Leader, B. L. in the package, Sensation, Mechanics' Delight. Those are all leaders up that way.

X-Q. 64. Have you ever made it a practice to speak of your Beech-Nut line of tobaccos and cigarettes? 3392

A. A practice?

X-Q. 65. Yes.

A. Very much, very much. I have introduced the Beech-Nut tobacco in many places in my district where I sell.

X-Q. 66. You often speak of the Beech-Nut cigarettes and tobacco as your Beech-Nut line?

A. Positively. I start in first and say I am a representative of the P. Lorillard Co., New York. I carry a book of pictures of all of these articles and I open the book and show the man. I have got the book in my bag at the hotel. That is simply to show and every one of them has "P. Lorillard Co." on it. 3393

X-Q. 67. Did you ever place Beech-Nut cigarettes or Beech-Nut Scrap Tobacco advertising or packages in windows of dealers where you were placing the goods?

A. Hundreds of them. I spent two whole months under the direction of our district manager just on window displays.

X-Q. 68. Did you ever place any in the same window with advertising of the Beech-Nut Packing Company products, such as chewing gum?

3394 A. I wouldn't, as a rule, place any in the window unless I got the entire window.

X-Q. 68. Did you ever place any alongside of a window containing Beech-Nut chewing gum or Beech-Nut Mints or any other of the Beech-Nut Packing Company products?

A. No, no. I made a strong specialty of saloons and generally got empty windows. You could get them easy.

3395 X-Q. 69. Were you ever cautioned by your superior to be careful not to place any of your Beech-Nut cigarette or Scrap Tobacco advertising, or packages, in windows alongside the products of the Beech-Nut Packing Company?

A. No, we were instructed not to put our advertising in the window if another tobacco company had a display there; either to get a window for our sole product or not at all.

X-Q. 70. Would you frequently sell these Beech-Nut cigarettes and scrap tobacco to a dealer who was also handling Beech-Nut Packing Company products, such as chewing gum, hard candies, peanut butter, and so forth?

A. I never paid any attention to notice that.

3396 X-Q. 71. In your district wouldn't you sell frequently to small general stores?

A. Oh yes.

X-Q. 72. And confectionery stores?

A. Yes.

X-Q. 73. Did you ever notice Beech-Nut Mints, chewing gum, and such, in the same store where you were making your sales?

A. I seen the gum in lots of stores but I don't even know now what Beech-Nut Mint means. I have bought the gum.

X-Q. 74. Referring to the order slip which you have described in your direct examination, one of which you

handed as a receipt to the customer, one of which you send to the jobber as you have described— 3397

A. I beg your pardon, I don't send one to the jobber.

X-Q. 75. Whatever your method was that you have described, have you seen similar order blanks and receipts for orders used by jobbers, with the jobber's name at the top?

A. No. They don't leave a slip with the retailer. They simply take the man's order because they can take it for all kinds of tobacco of different companies and they then bring that back to their concern.

X-Q. 76. Isn't it true that the jobber's salesmen use order slips of the general character similar to these of the Lorillard Co's, with the jobbers' name at the top? 3398

A. Yes, with the jobber's name at the top.

Mr. Johnson: That is all.

(Cross Examination Closed.)

Re-direct Examination.

By Mr. Cavanagh:

R-D Q. 1. This Comet tobacco you have referred to, what kind of a tobacco is that?

A. Cut plug. 3399

R-D Q. 2. What is it used for, how is it used?

A. Smoking. It is a plug cut in the package.

R-D Q. 3. But it is not a cigarette?

A. No, it is a tobacco, the same as our Union Leader and B. L. Tobacco.

R-D Q. 4. Would you hand me that box of cigarettes? (Witness handed Mr. Cavanagh package of Murad cigarettes) Would you look on that package of Murad cigarettes and see if Lorillard's name is on there?

A. Yes, "Capital stock owned by P. Lorillard Co."

3400 R-D Q. 5. That is one of the Anargyros brands?

A. Yes.

R-D Q. 6. This bonus to which you referred in your cross examination, did that usually apply to all goods you sold during that period?

A. Just Beech-Nut cigarettes.

R-D Q. 7. For what period was that?

A. Well, I don't know. I came in August and it ended in December. I don't know how long it was on but I was notified of it and got my little share the following March, but it was a percentage, as I understand it now. I can't remember it exactly.

3401 R-D Q. 8. Was that during the campaign?

A. Yes, just on Beech-Nut cigarettes.

R-D Q. 9. These instructions which you say you received at various times from the district manager or your superior, Mr. Roster, did those instructions apply to the other tobaccos too as well as the Beech-Nut?

A. Certainly. He advised us to always mention our brands, to always mention the Lorillard brand. I would take orders sometimes starting with Beech-Nut cigarettes and also include Helmars and Murads and Moguls through the jobber.

3402

Mr. Cavanagh: I think that is all.
(Re-direct Examination Closed.)

Re-cross Examination.

By Mr. Johnson:

R-X Q. 1. Referring to the box of Murad cigarettes which you have in your hand and from which you have just read the words: "Capital stock owned by P. Lorillard Co.", will you please tell me the relative size of the name "S. Anargyros" and the words you read: "Capital stock owned by P. Lorillard Co." on that box?

A. I should think that the words: "Capital stock owned by P. Lorillard Co." were about one-fourth the size of the word: "S. Anargyros." 3403

R-X Q. 2. Which name would you say was featured on that box?

A. S. Anargyros.

R-X Q. 3. Did you ever notice those words: "Capital stock owned by P. Lorillard Co." before on a Murad box?

A. No, I didn't.

R-X Q. 4. Have you sold Murads?

A. Yes, I have sold Murads.

R-X Q. 5. Have you sold many of them?

3404

A. Well, not many of Murads. In a place like this they go better but in my district there isn't much call for them. I never carry Murads in my car.

R-X Q. 6. Do you carry some of the other Anargyros brands?

A. Helmars.

R-X Q. 7. Are those words on the Helmar box?

A. I couldn't tell you.

R-X Q. 8. You never noticed?

A. No, I never noticed.

R-X Q. 9. Have you sold many of the Helmar cigarettes?

3405

A. Quite a few.

R-X Q. 10. A great many thousands?

A. Well, yes.

R-X Q. 11. Through what period of time, approximately?

A. A year and a half, or a year and eight months.

Mr. Johnson: That is all.

Mr. Cavanagh: That is all.

(Re-cross Examination closed.)

(Deposition closed.)

(Signature of witness waived.)

3406

JOHN RACOW, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Cavanagh, as follows:

Q. 1. What is your name, age, residence and occupation?

A. John Racow, will be 28 next month, residence 29 Sylvan Avenue, New Haven, Connecticut, salesman for the P. Lorillard Co.

Q. 2. How long have you been a salesman for the P. Lorillard Co.?

3407

A. Just a trifle over three years.

Q. 3. What kind of goods do you sell for P. Lorillard Co.?

A. Tobacco and cigarettes.

Q. 4. Will you name some of the brands that you sell?

3408

A. Level Head, smoking and chewing; Mechanics' Delight, smoking and chewing; Eureka, chewing; Old Fashioned, chewing; Climax, chewing; Red Cross, chewing; B. L., chewing; Murad cigarettes; Helmar cigarettes; Egyptian Dieties cigarettes; Turkish Trophies, cigarettes; Beech-Nut cigarettes; Beech-Nut chewing tobacco; Sensation, smoking; Union Leader, smoking; B. L., smoking; Just Suits, smoking; Climax, chewing.

Q. 5. What territory do you cover?

A. The state of Connecticut, the head of New Haven County. Then we work in crew work around the State.

Q. 6. How long have you been working in the State of Connecticut territory?

A. In the State of Connecticut for P. Lorillard?

Q. 7. For P. Lorillard Co.?

A. Just a trifle over three years.

Q. 8. You have referred to Beech-Nut chewing

tobacco and Beech-Nut cigarettes. How long have you been selling these brands? 3409

A. The Beech-Nut cigarettes I have been selling since around February or March, 1921, when they first came on the market. Beech-Nut chewing tobacco I have been selling since I have been in the employ of the P. Lorillard Co.

Q. 9. Is the Beech-Nut chewing tobacco known as a scrap tobacco too?

A. It is.

Q. 10. Were you on any of the missionary or introducing crews that put the Beech-Nut cigarette in this territory?

A. I was. I was on the tobacco crew in this State when the Beech-Nut cigarette first came out. I started in New Haven County, in the town of New Haven. 3410

Q. 11. When was that?

A. Either February or March of 1921.

Q. 12. What practice or procedure did you follow in introducing the Beech-Nut cigarette to the trade. Just tell us in your own words.

A. I would go into a store and introduce myself as Mr. Racow, representing the P. Lorillard Tobacco Co. and in quite a few of the stores they knew I sold tobacco. I would come in and shake hands with them and I would say: "I have got something good now. We are putting out a new cigarette, the Beech-Nut cigarette." I told that to people I knew and some I didn't know. 3411

Q. 13. Did anybody give you instructions to so present this brand or follow this procedure?

A. Mr. I. J. Perlowski, who was then the district manager. He told me the exact words I have just spoken of.

Q. 14. Was he your superior?

A. He was my superior. I took orders from him.

3412 Q. 15. Were there any other persons working on this crew at the same time, introducing this brand?

A Not at the same time. They had a different county. I was introducing the cigarettes right around New Haven.

Q. 16. In introducing the Beech-Nut cigarette to the trade, did you visit both the wholesale and retail trade or which one?

A. The retail trade.

Q. 17. Did you put up any advertising matter in connection with it. Just describe that?

3413 A. I would go in a store and they would give me permission to put up a poster and I would put it up so that they could see it.

Q. 18. Where did you get this advertising?

A. From our warehouse in the morning before I left.

Q. 19. And if a customer gave you an order for Beech-Nut cigarettes, what would you do. Just describe the procedure you followed in having that order executed?

3414 A. If I was selling for cash, I would sell it to him off the car; and make out the receipt slip "Paid" and give him a receipt. If not, I would make out an order, have them sign it, leave them a duplicate and bring a duplicate into the office.

Q. 20. If you sold him off the car and took cash for it, just state what the procedure was so far as the receipts went?

A. I turned in a slip to my superior officer of the cash sale.

Q. 21. Would you leave anything with the customers?

A. I would leave a duplicate with the customer as I told you before.

Q. 22. Do you know if that receipt had any name on it to indicate where it came from?

A. On every receipt there is P. Lorillard's name, 3415
right in our order book, and it would have my name
down at the bottom, paid.

Q. 23. At the same time you introduced the Beech-
Nut cigarette, were you selling any other brand of Loril-
lard's?

A. I was. I was selling all the Lorillard tobacco and
cigarettes too.

Q. 24. So that you weren't working on the Beech-Nut
cigarettes alone?

A. We were featuring Beech-Nut cigarettes. It was
one of our leaders. We have always got three leaders.

Q. 25. But you also took orders for the other Loril- 3416
lard tobaccos too?

A. Yes, I took orders for the other Lorillard tobacco
too.

Q. 26. In your visits to the trade, did you ever hear
any comments, inquiries or remarks that would lead you
to believe that people thought that Beech-Nut cigarettes
were made by the same people that made the chewing
gum and food products?

A. In my business not one of them. The fellows I
spoke to were tobacco dealers and none of them ever
questioned me or asked me who made them, but if they
had I would have told them that they were made by the 3417
P. Lorillard Co. and that I understood P. Lorillard
manufactured them.

Q. 27. In this introductory campaign did you exhibit
any samples to the public or what did you do in that
respect?

A. We did. We sampled the cigarettes to different
people. We would stand in a store and see a man
smoking a cigarette. We would go up to him and talk
to him and tell him we were representing P. Lorillard
Co. and they were putting out a new cigarette and

3418 would like to have them try it, and we would give him some.

Mr. Cavanagh: I think that is all.
(Direct Examination closed.)

Cross Examination.

By Mr. Johnson:

X-Q. 1. How long have you been in the tobacco business altogether?

A. Altogether about five years.

3419 X-Q. 2. How much of that time have you been with the P. Lorillard Co.?

A. A trifle over three years.

X-Q. 3. Who were you with before that?

A. Larus & Brother, Richmond, Virginia.

X-Q. 4. Where?

A. Richmond, Virginia, was the home office.

X-Q. 5. What territory did you cover for that company?

A. Connecticut.

3420 X-Q. 6. Did I understand you to say that you took part in the introductory campaign on the Beech-Nut cigarettes?

A. I did.

X-Q. 7. What was the duration of that campaign?

A. What do you mean, duration?

X-Q. 8. When did it begin and when did it end?

A. Well, I have been selling ever since. Since they have started.

X-Q. 9. I mean the special introductory campaign.

A. That I can't just remember.

X-Q. 10. When did you start the featuring of them?

A. We started the featuring of them in February or

March of 1921. I just can't think what time of the month it was. 3421

X-Q. 11. How long did you continue featuring the Beech-Nut cigarette from that time on?

A. From that time on, right along. That I can't—I just don't know how long.

X-Q. 12. During the time you were introducing Beech-Nut cigarettes, did you, at any time, work with a crew?

A. Not at all.

X-Q. 13. Were there crews featuring Beech-Nut cigarettes in the same territory that you were working in?

A. There were. 3422

X-Q. 14. How many such crews, do you know?

A. One.

X-Q. 15. Who was the head of that?

A. Mr. Roney, I believe.

X-Q. 16. How many were—were you familiar with the men in that crew?

A. Well, I knew a few of them.

X-Q. 17. How many were in that crew?

A. That I just don't know. I never worked with them. I just worked myself.

X-Q. 18. Were most of them old Lorillard men?

A. At that time I didn't know if they were old Lorillard men or not, but they all worked for P. Lorillard at that time. 3423

X-Q. 19. Were any of them new employees at that time?

A. That I don't know—if they were new or old.

X-Q. 20. Did you visit a great many customers in your territory during that campaign?

A. I visited nearly all of them.

X-Q. 21. What character of stores are they?

A. Any store that keeps tobacco or cigarettes.

X-Q. 22. You mean retail dealers?

3424 A. Yes, retail dealers.

X-Q. 23. Did any of these customers of yours make any comment on the fact that you were putting out a cigarette called Beech-Nut?

A. They knew we were selling cigarettes. I just told them it was a new one we were putting on the market.

X-Q. 24. When did you enter the employ of the Lorillard Co., what month in what year?

A. I don't just remember what month. I can't remember what month. I don't know if it was July.

X-Q. 25. 1920?

3425 A. 1920.

X-Q. 26. And this campaign began in what year?

A. 1921.

X-Q. 27. In February or March?

A. In February or March of 1921.

X-Q. 28. Had you gotten pretty well acquainted with your customers during that time?

A. I knew them pretty well because I had worked around the trade before.

X-Q. 29. By the time this introductory campaign began did most of your customers know you and know you were a Lorillard man?

3426 A. Yes.

X-Q. 30. Did you know of Beech-Nut chewing gum and Beech-Nut Mints and Beech-Nut Peanut Butter and such products of the Beech-Nut Packing Company at that time?

A. I had heard of them.

X-Q. 31. Did any one outside of the dealers—your customers—did you ever hear anyone comment on the fact that you were using the name Beech-Nut for cigarettes?

A. Not at the time; they didn't speak to me.

X-Q. 32. Did you know of such comment being made?

A. None at all.

3427

X-Q. 33. Were any of your customers that you placed Beech-Nut cigarettes with at that time, handling also Beech-Nut Mints and chewing gum?

A. That I don't know because I didn't worry about any other products, only tobacco.

X-Q. 34. Did you sell to small general stores and confectionery stores?

A. Any store that sold tobacco I sold to, small stores or large ones.

X-Q. 35. Didn't you ever see Beech-Nut chewing gum or Beech-Nut Mints or Beech-Nut hard candies in any of these stores?

3428

A. I seen them in the stores.

X-Q. 36. In the same stores you were selling Beech-Nut cigarettes?

A. Yes, but I never took any notice of them; how they had them. I seen them on the case once at a sale.

X-Q. 37. Then you, knowing these dealers—these customers—as well as you did, and with them handling other Beech-Nut products, as you think about it now, do you mean to say you never heard any comment on the fact that the P. Lorillard Co. was using the Beech-Nut name on cigarettes?

A. No, none whatsoever. I knew we were putting out Beech-Nut chewing tobacco at the time and Beech-Nut cigarettes had the same brand and every package had P. Lorillard's name on it and I would show the dealer that.

3429

X-Q. 38. Did you ever make a practice of referring to Beech-Nut Scrap Tobacco and Beech-Nut cigarettes as your Beech-Nut line?

A. I don't just grasp what you mean.

X-Q. 39. Did you ever refer to Beech-Nut chewing tobacco and Beech-Nut cigarettes as the Beech-Nut line?

3430 A. No Beech-Nut line at all. It is a P. Lorillard line. That is just the name. P. Lorillard don't manufacture nothing in the Beech-Nut line at all. Beech-Nut chewing tobacco and Beech-Nut cigarettes are of P. Lorillard manufacture.

X-Q. 40. What was the name of your chief?

A. At that time?

X-Q. 41. At that time, yes.

A. Mr. I. J. Perlowski.

X-Q. 42. Did he instruct you to be careful not to let it appear that the Beech-Nut cigarettes were the product of any other company but your own?

3431 A. No. All he did was to tell us how to talk to a customer and how to approach him on the Beech-Nut cigarettes.

X-Q. 43. Did he ever instruct you not to let it appear that they were a product of the Beech-Nut Gum people?

A. No.

X-Q. 44. Did you ever receive any written instructions to that effect?

A. No, I don't think so. I don't know. No. I don't think they did. I can't remember that.

X-Q. 45. Did you place any advertising matter of Beech-Nut tobacco or Beech-Nut cigarettes in windows?

3432 A. No.

X-Q. 46. Did you place them in the stores of your customers?

A. Well, I would just stick them on the wall; just posters, that is all.

X-Q. 47. Were you ever cautioned by Mr. Perlowski or any one in the Lorillard Co. not to place those side by side with the Beech-Nut Packing Company's in the same store?

A. I never did it.

X-Q. 48. Did you ever receive any instructions in regard to it or cautioning you not to do it?

A. I don't remember whether I did or not.

3433

X-Q. 49. Have you taken part in any other introductory campaign in any other brands?

A. Yes, I have.

X-Q. 50. What were they?

A. Comet tobacco, a smoking tobacco.

X-Q. 51. Any other?

A. That is about all I can think of.

X-Q. 52. How did it take at the start as compared with the Beech-Nut cigarettes?

A. It took very well at the start.

X-Q. 53. How did it compare at the start with Beech-Nut cigarettes?

3434

A. In quantity I don't know but in distribution just as good. That is what we were after—distribution.

X-Q. 54. Do you know if the P. Lorillard Co. features its name on all its products?

A. Every one.

X-Q. 55. Did you say you handled the Turkish brands of cigarettes?

A. I did; Turkish Trophies, Murads, Helmars, Egyptian Dieties, Moguls.

X-Q. 56. What name appears as the maker on those brands?

A. S. Anargyros, P. Lorillard Co., Successor.

3435

X-Q. 57. Have you got a package of any one of those brands with you? (Witness produces a package of Murad cigarettes from his pocket.)

X-Q. 58. Please read the name of the maker as it appears on that Murad package?

A. S. Anargyros, Capitol stock owned by P. Lorillard Co.

X-Q. 59. What is the relative size of the words: "S. Anargyros" and the words: "Capital stock owned by P. Lorillard Co."?

A. There is a difference in size.

3436 X-Q. 60. What is the larger?

A. S. Anargyros.

X-Q. 61. How much larger?

A. About quarter the size.

X-Q. 62. With the words: "Capital stock owned by P. Lorillard Co." about one-quarter of the size of "S. Anargyros" on that package, would you say that the name of the P. Lorillard Co. was featured on that package as the manufacturer?

A. I would.

X-Q. 63. Yet you say that "S. Anargyros" is four times the size of the other words?

A. It is.

3437 X-Q. 64. Will you give me the package (Witness hands package of Murad cigarettes to Mr. Johnson). I hold the package about six feet from you. Can you read any words on there except "S. Anargyros" in that group that you read?

A. That is a question that is hard to answer because I know just what is on that package.

X-Q. 65. Can you read anything beside "S. Anargyros"?

A. I can read it pretty fair away from here. I can read it a little.

3438 X-Q. 66. A little?

A. Yes.

X-Q. 67. What appears as the name of the maker on the Egyptian Dieties?

A. That I can't just remember now.

X-Q. 68. What appears as the name of the maker on Helmars?

A. Oh, I know there is P. Lorillard on every package and that is the one I work for, P. Lorillard. I know they put the name on every package.

X-Q. 69. You are sure of that?

A. Almost positive.

X-Q. 70. You don't know that the name "P. Lorillard Co." is omitted from some of the packages, such as Helmars? 3439

A. I don't know but I am almost positive.

Mr. Johnson: That is all.
(Cross Examination Closed).

Re-direct Examination.

R-D Q. 1. In the Comet campaign, did you use the same line of **introductory** talk to the trade that you used in connection with the Beech-Nut cigarettes?

A. ~~The same~~ identical talk. I went to the trade the same way, introducing it the same. 3440

Mr. Cavanagh: That is all.
(Re-direct Examination Closed)
(Deposition closed)
(Signature of Witness waived)

PHILIP GERARDI, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Preston, as follows: 3441

Q. 1. Will you please state your name, age, residence and occupation?

A. Philip Gerardi, 18 years old, 288 Windsor Avenue, Hartford, Conn., general manager here—clerk.

Q. 2. Would you name some of the classes of products that you sell here in your store?

A. Fruits, canned goods—do you want me to give the names?

Q. 3. No, just the general classes. Canned goods—?

A. Fruits, syrups, cigars, papers, pipes, candy.

Q. 4. Mr. Gerardi, do you sell Beech-Nut Scrap tobacco here like the package I show you (Mr. Preston showing the witness package of Beech-Nut Scrap tobacco)?

A. Yes.

Q. 5. Do you sell Beech-Nut cigarettes?

A. Yes.

Q. 6. How long have you sold those products?

A. I have sold those products about four years, and sold these when they come out; Beech-Nut chewing tobacco about four years.

Q. 7. And the Beech-Nut cigarettes?

A. I don't know how long they have been out—ever since they came out.

Q. 8. Do you know what company makes those products?

A. P. Lorillard Co.

Q. 9. Do you sell Beech-Nut Peanut Butter here?

A. Yes, we do.

Q. 10. Do you sell Beech-Nut chewing gum?

A. Yes.

Q. 11. Do you know what company manufactures those products?

A. The Beech-Nut Packing Company.

Q. 12. Were you ever under the impression that Beech-Nut chewing tobacco or Beech-Nut cigarettes were made by the same company that makes the Beech-Nut Peanut Butter and the Beech-Nut chewing gum?

A. No.

Q. 13. Did you ever hear any remarks, inquiries or comments among your customers or others to the effect or which led you to believe that they had the impression that Beech-Nut cigarettes were made by the Beech-Nut Packing Company?

A. No.

Q. 14. Mr. Gerardi, will you state whether or not you

regard this tobacco and cigarettes as being in the same or different class of products from food products? 3445

A. Different class.

Q. 15. About how many customers a day do you have in your store here?

A. About—I don't know—about nine hundred or more.

Q. 16. Do you sell Blue Ribbon Mayonnaise?

A. Yes.

Q. 17. Do you sell Blue Ribbon Potato Chips?

A. Yes.

Mr. Johnson: I object to the last two questions and answers as incompetent, immaterial and irrelevant. It is stipulated that this objection will apply to all questions and answers along this same line. 3446

Q. 18. Do you sell Blue Ribbon Fig Brownies?

A. We try to awfully hard.

Q. 19. Do you know, sir, whether Blue Ribbon Potato Chips are put up by the same company that puts up the Blue Ribbon Fig Brownies?

A. No.

Q. 20. You don't know, or is it a different company?

A. That is a different company. They are made by W. A. Walker up in Albany. 3447

Q. 21. Do you handle Blue Ribbon Tobacco?

A. No.

Q. 22. Do you sell Camel cigarettes here?

A. Yes.

Q. 23. Do you sell Kamol Candied Virginia Peanuts?

A. Yes.

Q. 24. Are these products put up by the same company?

3448 A. Not that I know of. It is put up by the Kamols Corporation and the cigarettes are put up by Reynolds.

Mr. Preston: That is all.
(Direct Examination closed.)

Cross Examination.

By Mr. Johnson:

X-Q. 1. Mr. Gerardi, what kind of a store is this?

A. A fruit and tobacco store, and we sell canned goods.

3449 X-Q. 2. Would you call it a grocery and delicatessen store?

A. No, we don't keep delicatessen. I would call it a fruit store and tobacco store.

X-Q. 3. What is the name of this place?

A. P. A. Martocci.

X-Q. 4. And the street address?

A. 1157 Main Street, Hartford, Conn.

X-Q. 5. How many employes are there?

A. One, the owner and I.

X-Q. 6. Are you both on duty much of the time?

A. Most of the time. I am on most all the time.

3450 X-Q. 7. You mean one of you is always on duty?

A. No, two sometimes.

X-Q. 8. Two are usually on duty?

A. Yes.

X-Q. 9. When you first saw this Beech-Nut chewing tobacco, who did you think was putting it out?

A. I didn't know who put it up.

X-Q. 10. Were you handling at that time Beech-Nut Peanut Butter or Beech-Nut Gum or any of the Beech-Nut candies?

A. Just the Beech-Nut gum I had at that time.

X-Q. 11. Did you get the idea, when you saw that

Beech-Nut tobacco package, that it might be put up by the Beech-Nut Packing Company? 3451

A. I didn't stop to think about that. I just looked at the package.

X-Q. 12. When you first saw the package of Beech-Nut cigarettes, who did you think was putting it out?

A. The Lorillard Tobacco Co. I didn't know if it was Lorillard but I know it was some tobacco company.

X-Q. 13. Were you keeping some of the Beech-Nut Packing Company products at that same time?

A. We had peanut butter.

X-Q. 14. Have you handled many of the Lorillard tobacco products while you have been in business? 3452

A. Quite a few.

X-Q. 15. What were some of them?

A. Sensation tobacco, B. L., Comet, Climax.

X-Q. 16. How long have you been in this store?

A. About four years.

X-Q. 17. Have you been handling Beech-Nut chewing tobacco all that time?

A. Yes.

X-Q. 18. Have you known the Lorillard salesmen all that time?

A. No.

3453

X-Q. 19. Do you know him now?

A. By sight. He comes in here every so often.

X-Q. 20. Have you known that he is the Lorillard salesman whenever he comes in?

A. Yes.

X-Q. 21. From whom did you buy the Beech-Nut chewing tobacco the first time?

A. It is impossible to tell. I don't know. That is some job.

X-Q. 22. From whom did you buy the Beech-Nut cigarettes the first time?

- 3454 A. From a jobber or through the salesman.
X-Q. 23. What is the name of the Lorillard salesman that comes into your store?
A. Mr. Hallisey.
X-Q. 24. How long has he been coming in here?
A. About a year.
X-Q. 25. Did you know the Lorillard salesman before him?
A. No.
X-Q. 26. Are you kept pretty busy waiting on customers in the store?
A. Sure, sometimes.
3455 X-Q. 27. Do you have very much time to talk to your customers?
A. Sure.
X-Q. 28. Do you talk to customers as a rule?
A. Yes.
X-Q. 29. When a customer comes in to buy cigarettes or tobacco, does he often ask you who makes it?
A. No.
X-Q. 30. Does he usually ask for his brand?
A. Why, first they did and now all our customers don't ask for that. I know just what they want.
X-Q. 31. When a customer comes in and you don't
3456 know what he wants, as soon as you see him, what does he usually ask you?
A. Some ask me for tobacco and some ask me for just Beech-Nut, and I ask them whether they want Beech-Nut tobacco or Beech-Nut gum. Some say: "Beech-Nut Chewing."
X-Q. 32. Does a customer usually ask for Camels or Lucky Strikes, or whatever the name of the brand is?
A. Yes.
X-Q. 33. Did you ever have a customer ask you for Camels made by the Reynolds Company?
A. No.

X-Q. 34. Did you ever have a customer ask you for any tobacco or cigarette package made by any certain company? 345

A. Once or twice somebody asked me for American Tobacco Company tobacco. That is all. They didn't tell me what brand they wanted.

X-Q. 35. Would you say that these tobacco and cigarettes sell by the brand. Is it the brand name that sells them?

A. It is according to reputation, I think. No, I don't know about the name. What they go by, that is all people know.

X-Q. 36. What do they ask for, the name of the brand or the maker? 345

A. The name.

X-Q. 36. Which?

A. The name of the brand.

X-Q. 37. Have you ever heard of any one making any comments or inquiries as to whether the Beech-Nut Scrap Tobacco or the Beech-Nut cigarettes were made by the same company that makes the Beech-Nut Peanut Butter or the chewing gum?

A. No, not that I know of. I don't remember of anybody asking me that.

X-Q. 38. Can you remember one such remark by any one in your presence? 345

A. I don't recall any.

X-Q. 39. Have you sold much Beech-Nut chewing tobacco?

A. Yes, quite a little.

X-Q. 40. Have you sold many Beech-Nut cigarettes?

A. Not so many. I always have them on hand.

X-Q. 41. You never heard one such remark or comment as to whether they were made by the same people that make the Beech-Nut gum?

A. No.

1460 X-Q. 42. When you say you never heard any such remarks, comments or inquiries, you mean you don't remember?

A. I don't think I ever heard any. I can't recall any.

X-Q. 43. You don't remember?

A. No, I don't remember hearing any.

Mr. Johnson: That is all.

(Cross Examination Closed.)

Re-direct Examination.

1461 By Mr. Preston:

R-D. Q. 1. Do you sell Pall Mall cigarettes?

A. Yes.

R-D Q. 2. Do you sell Pall Mall Candy?

A. Yes, we do.

Mr. Johnson: That is objected to as incompetent, immaterial and irrelevant.

Mr. Preston: That is all.

(Re-direct Examination Closed.)

(Deposition Closed.)

1462 (Signature of witness waived.)

BENJAMIN SALETAN, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Preston, as follows:

Q. 1. Mr. Saletan, will you please state your name, age, occupation and address of your store here?

A. Benjamin Saletan, age 43, running a cigar stand at 361 Main Street, Hartford.

Q. 2. How long have you been in the retail tobacco business? 3463

A. Well, I have been on and off for the last twenty-eight years or so.

Q. 3. Is this stand, which you are now running, in the front of a restaurant?

A. Yes, sir.

Q. 4. About how many customers do you have here a day, sir?

A. I have got about four hundred.

Q. 5. Do you sell Beech-Nut Scrap tobacco like the package I show you? (Mr. Preston showing witness a package of Beech-Nut Scrap Tobacco). 3464

A. Yes, sir.

Q. 6. How long have you handled that product?

A. Well, I have handled this product—I couldn't say exactly but I am handling it for the last four years I know, and they handled it before.

Q. 7. Do you know what company makes that scrap tobacco?

A. Lorillard.

Q. 8. Do you sell Beech-Nut cigarettes like the package I now show you (Mr. Preston showing witness a package of Beech-Nut cigarettes).

A. Yes, sir. 3465

Q. 9. Do you know who makes that?

A. The same company, I believe.

Q. 10. Is the Beech-Nut chewing tobacco a good seller?

A. Yes, sir.

Q. 11. Is it your best selling scrap tobacco?

A. Well, to a certain extent, yes. I sell more of that than I do any of the other brands.

Q. 12. Do you sell Beech-Nut chewing gum like the package I now show you (Mr. Preston showing the witness a package of Beech-Nut chewing gum).

A. Yes, sir.

3466 Q. 13. Do you know what company makes that?

A. I think it is the Beech-Nut Chewing Gum Co. to my knowledge. The Beech-Nut Chewing Gum Company.

Q. 14. Were you ever under the impression that the Beech-Nut chewing gum was made by the same company that makes the Beech-Nut scrap tobacco and the Beech-Nut cigarettes?

A. No, sir. I always considered them as two different products.

Q. 15. Do you regard the tobacco and cigarettes in the same or a different class of products than the chewing gum?

3467 A. Different products. I have seen a lot of Beech-Nut brands of different things, and I say I consider that one don't belong to the other.

Q. 16. Mr. Saletan, have you ever heard any remarks, inquiries or comments among your customers or anybody else to the effect or which led you to believe that they were under the impression that Beech-Nut gum was made by the same company that makes the tobacco and cigarettes?

3468 A. I never heard that as long as I can remember but I tell you what I have heard once. I had a cigar in here called "Veribest" and I have got it now. The only time I ever heard the remark in a joking way once or twice was something like: "What do you call that brand of meat?". A meat brand. The Veribest meat brand. That is all I ever heard. I don't believe I ever heard that more than twice in all that time.

Q. 17. What is the name of that cigar?

A. The Veribest. That was only said in a joking remark whenever I would hear that.

Q. 18. But you don't remember ever hearing any remarks, confusing the Beech-Nut Scrap tobacco and the Beech-Nut cigarettes with the Beech-Nut gum as something that was put out by the same company?

A. No, I don't remember ever having heard anything like that. 3469

Mr. Preston: That is all.
(Direct Examination closed)

Cross Examination.

By Mr. Johnson:

X-Q. 1. What is the name of this place of business where you are located?

A. This is the City Lunch.

X-Q. 2. What is the street address? 3470

A. 361 Main Street.

X-Q. 3. Is your place of business a cigar stand in the front of the quick lunch counter?

A. No, it is a separate business of my own.

X-Q. 4. But it is in the same room with the dairy lunch?

A. Yes. It isn't exactly a dairy lunch. It is a general lunch room.

X-Q. 5. About how much space does your stand occupy?

A. 4½ feet by 8. Let me see, no. (Pause) It is 4½ feet by 8. That is the measurement. 3471

X-Q. 6. It is in the front of the lunch room?

A. Yes.

X-Q. 7. Are you kept pretty busy waiting on customers during part of the day?

A. No, not so very much.

X-Q. 8. Do you have rush times?

A. Very little.

X-Q. 9. Do you have rush times?

A. Very little.

X-Q. 10. You don't?

A. It is generally a steady influx and it isn't very rushing. There is no time I have any rush.

3472 X-Q. 11. Do you spend much time talking to your customers, who are buying tobacco or cigarettes?

A. Yes, it happens quite often. I talk to them sometimes five or ten or fifteen minutes if anybody is willing to converse.

X-Q. 12. What products of the Beech-Nut Packing Company have you kept beside chewing gum?

A. Besides chewing gum I kept their Life Savers. What do you call it—Mints, something like that.

X-Q. 13. Did you say you had been in the tobacco business for something like twenty-eight years?

3473 A. On and off. I wouldn't say I had always been in it.

X-Q. 14. During that time have you handled many of the P. Lorillard Co. products?

A. Why, I imagine I have carried them all in their day; whatever they have made.

X-Q. 15. Were you keeping Beech-Nut chewing gum at the time you first put in any of the Beech-Nut Scrap Tobacco or cigarettes?

3474 A. I don't remember keeping Beech-Nut chewing gum in the last four years because I have been off anywheres from four to six years before I went in again to the same line of business. I don't remember exactly if I had that before then. In the past four years I have never carried it.

X-Q. 16. Haven't you ever heard any one ask any questions about whether the Beech-Nut chewing tobacco or Beech-Nut cigarettes were made by the chewing gum people?

A. Never to my knowledge.

X-Q. 17. When a man comes in to buy tobacco or cigarettes, does he often ask you who makes the article he is buying?

A. Oh seldom, very seldom.

X-Q. 18. Does he often ask you for cigarettes or tobacco made by a certain concern? 3475

A. Hardly.

X-Q. 19. What does he usually ask for?

A. He usually asks for the name Camel or Lucky Strike or Veteran or any of the kinds, but they don't specify the manufacturer.

X-Q. 20. Did you ever have a customer ask you for Camels made by the Reynolds Company?

A. No.

X-Q. 21. Or Lucky Strikes made by the American Tobacco Company?

A. No, sir.

3476

X-Q. 22. Then in your experience in the tobacco business, somewhat under twenty-eight years, have you found it is the brand that sells the cigarette or tobacco?

A. The brand is always what sells it, the name of the brand.

X-Q. 23. Have you made any attempt to remember, or make note of any such questions or remarks you have heard as to whether the Beech-Nut chewing tobacco or cigarettes were made by the chewing gum people?

A. I haven't made any note of it but I can always tell if a man is interested if he asks me a question a few times, I can always keep it in my mind. If you ask me any questions: "Is this this man's make?" or "Is it that man's make?" it is always in my mind. Some people come in and ask those things, but I never marked down those remarks.

3477

X-Q. 24. You haven't made any particular effort to remember any such remarks or questions, have you?

A. No, it never came to my mind to think about those things here. Naturally, if a man will ask you, it is in your mind. It can't be helped, it is human nature.

Mr. Johnson: That is all.

(Cross Examination closed.)

3478

Re-direct Examination.

By Mr. Preston:

R-D. Q. 1. Mr. Saletan, do you know who makes the Veribest Cigar that you just showed us?

A. Yes, sir, it is made in Hartford by a man by the name of Louis Bogin.

R-D. Q. 2. Is he a cigar manufacturer?

A. He is a cigar manufacturer on a very small scale.

3479

R-D. Q. 3. Mr. Saletan, I wonder if you would tell us just in your own words what you mean when you say that it is the brand that sells the cigarette. Can you enlarge on that?

A. The only way I can enlarge on it is when a man says: "Give me a Lorillard product or a Beech-Nut product" or anything like that. "Give me a package of Murads" or "Give me a package of Rosedales" or something else. I don't believe there is one of a thousand who knows even who makes it.

Mr. Preston: That is all.

(Re-direct Examination Closed.)

(Deposition closed.)

3480

(Signature of witness waived.)

JOSEPH A. TEVLIN, a witness called on behalf of the defendant, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by Mr. Preston, as follows:

Q.1. Will you please state your name, age, occupation and business address?

A. Joseph A. Tevlin, age 42, manager of a cigar business at 288 Asylum Street, Hartford, Conn.

Q. 2. How long have you been in the retail tobacco business, Mr. Tevlin? 3481

A. About twelve years.

Q. 3. Have you been here at this location all that time?

A. No, I was manager of the Bannigan Cigar Co. first. Then I was manager for D. D. Austin next door here for five years. Then I worked for Joe Levine down here and come up here seven weeks ago.

Q. 4. They are all retail tobacco establishments?

A. Yes, all retail.

Q. 5. Do you handle at this place Beech-Nut tobacco like the package I now show you? (Mr. Preston showing the witness package of Beech-Nut Scrap Tobacco.) 3482

A. Yes, sir.

Q. 6. How long have you sold that tobacco, Mr. Tevlin, either here or at your former locations?

A. I have sold Beech-Nut tobacco when it first came out. There was a shortage of Red Band tobacco at that time and Beech-Nut got on the market.

Q. 7. Do you know what company puts out Beech-Nut tobacco?

A. Lorillard.

Q. 8. Do you sell Beech-Nut cigarettes like the package I now show you? 3483

A. I do, but I am out of it just now.

Q. 9. How long have you sold those cigarettes?

A. Ever since they have been on the market.

Q. 10. Do you know what company manufactures them?

A. P. Lorillard.

Q. 11. Do you handle Beech-Nut chewing gum?

A. I do, yes, sir.

Q. 12. Do you know what company makes that?

3484 A. The Beech-Nut people, I suppose. The Beech-Nut Packing people, isn't it?

Q. 13. Were you ever under the impression that the Beech-Nut Scrap Tobacco and the Beech-Nut Cigarettes were made by the same company that makes the Beech-Nut gum?

A. No, sir.

Q. 14. Did you ever hear any inquiries, comments, or remarks among your customers or others which indicated to you that they were under the impression that the Beech-Nut Scrap tobacco and cigarettes were made by the same company that makes the Beech-Nut chewing gum?

A. No, sir.

Q. 15. Do you regard tobacco and cigarettes as in the same or a separate class of products from chewing gum and confections or food products?

A. Why, it is a separate concern, isn't it?

Q. 16. I don't think you quite understand my question. I wasn't thinking so much of the concern that makes them but I was trying to find out whether you regarded tobacco and cigarettes as in any way related to confections or food products or whether you regarded them as an entirely distinct line?

3486 A. An entirely distinct line, I should think.

Q. 17. Mr. Tevlin, did any Lorillard salesmen ever make any remark to you concerning their Beech-Nut tobacco products, which indicated to you or led you to believe that there was any connection between the Beech-Nut cigarettes and the Beech-Nut tobacco, and the Beech-Nut chewing gum?

A. Not in my experience.

Mr. Preston: That is all.

(Direct Examination Closed.)

Cross Examination.

3487

By Mr. Johnson:

X-Q. 1. What is the name of this place of business?

A. Salvatore Randazzo.

X-Q. 2. Is it a restaurant?

A. Yes.

X-Q. 3. Have you a cigar and tobacco stand at the front of the restaurant, by the front door?

A. Yes.

X-Q. 4. About how much space does your tobacco stand occupy in the front of the restaurant?

3488

A. About ten by twenty feet.

X-Q. 5. About how many customers a day do you have at your tobacco stand?

A. About two hundred. Probably more, Mr. Johnson.

X-Q. 6. Have you handled any other of the Beech-Nut Packing Company's products besides the chewing gum?

A. No.

X-Q. 7. When you first saw the Beech-Nut chewing tobacco, who did you think was putting it out?

A. P. Lorillard.

3489

X-Q. 8. In the twelve years that you say you have been in the retail tobacco business have you sold the P. Lorillard Co's products?

A. Yes, sir.

X-Q. 9. About how long have you been handling their products?

A. Ever since I have been in the business.

X-Q. 10. Have you known the Lorillard salesmen?

A. Not personally, no.

X-Q. 11. Did you know that they were Lorillard salesmen when they came in to your shop, as a rule?

343490 A. No, they come in and asked me if I wanted Beech-Nut Scrap or cigarettes or tobacco and they would tell me who they represented, you know.

X-Q. 12. Do your customers often ask for a tobacco or a cigarette by the name of the maker?

A. By the name of the maker?

X-Q. 13. Yes?

A. No.

X-Q. 14. What do they usually ask for?

A. Beech-Nut Scrap tobacco, if they want Beech-Nut.

343491 X-Q. 15. If they want Camels or Lucky Strikes what do they ask for?

A. Camels.

X-Q. 16. That is the name of the brand?

A. Yes.

X-Q. 17. Would you say that tobacco and cigarettes sell by the name of the brand rather than the maker?

A. If a man wanted Camels he would call for Camels; if he wanted Fatimas he would call for Fatimas; if he wanted Beech-Nut or Meccas or Lucky Strikes he would call for them.

343492 X-Q. 18. Did you ever have a customer come in and ask for Camels made by the Reynolds Company?

A. Not exactly by the name. They would come up and ask for Camels.

X-Q. 19. Did you ever have any one come in and ask for Beech-Nut chewing tobacco made by Lorillard?

A. No, they would come up and ask for Beech-Nut Scrap Tobacco.

X-Q. 20. Are you familiar with most of the brands of tobacco and cigarettes?

A. I am.

X-Q. 21. Have you heard any one at any time, in your presence, ask or make any remarks about whether

the Beech-Nut chewing tobacco or Beech-Nut ciga- 3493
rettes were made by the chewing gum people?

A. No, I haven't.

X-Q. 22. Have you made any effort to remember any such remarks or questions?

A. I have never had them ask me that question, Mr. Johnson.

X-Q. 23. I mean through the last four years that you say you have been handling the Beech-Nut Scrap tobacco, have you made any effort during that time, as the days went by, to remember any such comments or questions that might be asked you about who made the Beech-Nut Scrap tobacco or cigarettes? 3494

A. No, no.

X-Q. 24. When you say you didn't hear any such comments or inquiries you mean that you don't remember hearing any?

A. No, I don't remember anybody asking me such a question at all, you know.

Mr. Johnson: That is all.

(Cross Examination Closed.)

Re-direct Examination.

By Mr. Preston:

3495

R-D Q. 1. Mr. Tevlin, if you had heard any considerable number of questions or remarks of that character, do you think you would have remembered them or they would have been impressed on your mind?

A. Well, they wouldn't have been impressed on my mind, I suppose, if they asked me whether the tobacco and everything was under the same head, but nobody ever asked me any question like that.

496 R-D Q. 2. Well, if you had heard a great many of those remarks, do you think you would have remembered it?

A. I surely would, I surely would.

R-D Q. 3. Is your store here located in the business section of the city?

A. This is considered a business street, Asylum Street.

R-D Q. 4. How far are you from the Preston Market?

497 A. It must be all of a block, it must be all of a block, one block you might as well say. The Preston Market is between the other block, and I am pretty near to the corner. The other corner is a block.

Mr. Preston: That is all.

(Re-direct Examination Closed.)

Re-cross Examination.

By Mr. Johnson:

R-X Q. 1. Mr. Tevlin, how has the Beech-Nut Scrap tobacco sold in your experience?

498 A. Very good, Mr. Johnson.

R-X. Q. 2. How has the Beech-Nut cigarette sold?

A. Very good.

R-X Q. 3. Right from the beginning?

A. Right from the beginning on account of being one of the cheapest cigarettes on the market at that time.

R-X Q. 4. Are you selling many of them now?

A. Not so many now, no. Of course the others, you know, Camels and like that, has fell down on price.

R-X Q. 5. About how many Beech-Nut cigarettes a week have you sold?

A. Well, when they first come out I used to sell about seven cartons a day. 3499

R-X Q. 6. How many cigarettes would that be?

A. Fourteen hundred; two hundred to each carton.

R-X Q. 7. Did you find that your customers got in the habit of smoking Beech-Nut cigarettes? Did you have any repeat sales?

A. I did, yes, sir.

R-X Q. 8. Did you hear any complaint as to the Beech-Nut cigarettes?

A. No, no. They liked them. I suppose it was a cheap cigarette at the time. They were selling fast while Camels and other stuff, you know, was up to 20 cents a pack, and the consumer got accustomed to that brand, I suppose, and got in the habit of buying them. 3500

Mr. Johnson: That is all.

(Re-cross Examination Closed.)

(Signature of Witness waived.)

(Deposition Closed.)

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if B. T. MILLER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows: 3501

Direct Examination.

My name is B. T. MILLER, I am of legal age and I am the manager of a store known as Miller's Soda Shop, located at 177 Windsor Avenue, Hartford, Connecticut. This store is in the locality of Hartford, known as the East Side, and is one block from No. 78 Village Street.

3502 In this store we sell confectionery, soda, tobacco, stationery and periodicals. We handle approximately 500 customers a day, and, as a general rule, there are two clerks on duty here.

I have sold Beech-Nut Scrap Tobacco for the past three or four years and Beech-Nut cigarettes since they appeared on this market. I have always known that both of these products were manufactured by the Lorillard Tobacco Co. I handle Beech-Nut chewing gum and Beech-Nut Mints. I know these articles to be the product of the Beech-Nut Packing Company.

3503 I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought that Beech-Nut Scrap Tobacco or Beech-Nut cigarettes were the products of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct class of product from chewing gum, candies, or food products; and I have never heard of a food product concern that manufactured any tobacco. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a cigarette package or a scrap tobacco package.

Cross Examination.

3504

I have known of the Lorillard Tobacco Co. for a good many years. The Lorillard salesmen frequently call at my store. I am familiar with most of the different brands of cigarettes and tobacco.

I am kept pretty busy waiting on customers and haven't much time to listen to what people are saying in the store. The customer hardly ever asks who makes the tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether

or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

3505

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

3506

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if MAX SELTZER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is MAX SELTZER. I am of legal age and I am a groceryman by trade and do business at 728 Park Street, Hartford, Conn. In addition to groceries I handle tobacco and confections. I have about 300 customers a day in my store, and, as a rule, I am the only clerk on duty here.

3507

I have sold Beech-Nut Scrap Tobacco for the past three years, and it is my best selling scrap tobacco. I do not handle Beech-Nut cigarettes. I have always known that Beech-Nut Scrap tobacco was manufactured by the P. Lorillard Co. I handle Beech-Nut chewing gum which I know to be a product of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or com-

3508 ments among my customers or others to the effect, or which led me to believe that they thought that Beech-Nut Scrap Tobacco was made by the same company that manufactures Beech-Nut chewing gum.

I regard tobacco as an entirely distinct line of merchandise from chewing gum, and I have never heard of a chewing gum or candy concern that manufactured any tobacco. I have never seen a package put out by the Beech-Nut Packing Company which looked like either the Scrap Tobacco package or the cigarette package.

I sell Red Seal Lye and Red Seal Snuff. These two articles are manufactured by different companies.

3509 IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

Cross Examination.

I have known of the Lorillard Tobacco Co. for many years. The Lorillard salesmen frequently call in at my store. My customers do not often ask who makes the cigarette or tobacco which they are buying.

3510 I am kept pretty busy waiting on customers and have not paid much attention to what the customers were saying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

3511

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if ARTHUR LENNOX were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3512

Direct Examination.

My name is ARTHUR LENNOX, I am 45 years of age and I am a druggist by vocation, being the manager of a drug store, located in the residential section of Hartford, Connecticut, at 1136 Albany Avenue. My store is a large one, situated on a corner, and we sell the usual varied line carried by drug stores, including such articles as drugs, toilet articles, stationery, periodicals, candy, soda and tobacco.

I have sold Beech-Nut Scrap tobacco for several years past and Beech-Nut cigarettes since they appeared on this market. I have always known that these were products manufactured by the P. Lorillard Co. I handle Beech-Nut chewing gum and Beech-Nut mints, which products I know to be manufactured by the Beech-Nut Packing Company.

3513

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were manufactured by

3514 the Beech-Nut Packing Company, except that when the cigarette first appeared on this market I do remember hearing three or four people inquire whether this cigarette was made by the same people who made the Beech-Nut gum.

I regard tobacco and cigarettes as in a very distinct line from chewing gum, candy or other food products, and I have never known of a food product concern that manufactured any tobacco. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

3515

Cross Examination.

I have known of the Lorillard Tobacco Co. for some years. The Lorillard salesmen frequently call at my store. I am pretty familiar with the different brands of tobacco and cigarettes.

I am kept pretty busy waiting on customers and waiting on the counter in all parts of the store. I have not paid much attention to what was being said around the tobacco stand.

3516

I have made no particular effort to remember any inquiries, remarks, or comments as to who made the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes, and had no reason to do so. When I say I heard only three or four inquiries or remarks as to whether the Beech-Nut cigarettes were made by the Beech-Nut gum people, I mean I cannot now remember any more than that.

Re-direct Examination.

If I had heard any remarks, inquiries, or comments, indicating confusion on this matter among my customers in considerably greater numbers than the three or four

which I have mentioned, I think that I would have remembered that fact. When those three or four inquiries were addressed to me I told the inquirers that the cigarette was made by the P. Lorillard Co. and that the Beech-Nut Packing Company was the manufacturer of the gum. 3517

I sell Velvet tobacco, Velvet Pencils and Velvet Candy Kisses and Velvet Skin Lotion, and none of these articles are manufactured by the same concern.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, immaterial and irrelevant. 3518

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if MORRIS STEIN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3519

My name is MORRIS STEIN. I am of legal age and I am the manager of a retail drug store, located at 436 Asylum Street, Hartford, Connecticut. This store is known as the Bushnell Cigar Counter and is situated next door to Preston's Market and is one and one-half blocks from the store run by Joseph De Rago at 82 Spring Street, and is one and one-half blocks from the grocery store run by Solomon T. Kramer, 84 Church Street.

520 I have handled Beech-Nut Scrap Tobacco for the past four years and it is my best selling scrap tobacco. I have sold Beech-Nut cigarettes since they appeared on the market and have always known that both the Beech-Nut Scrap Tobacco and the Beech-Nut cigarettes were manufactured by the P. Lorillard Co. I have been in the tobacco business for a great many years and have long known of the Lorillard Tobacco Co. as one of the oldest and largest of the tobacco concerns.

521 I sell Beech-Nut chewing gum, Beech-Nut Mints and Beech-Nut Caramels, and I have always known that these articles were put out by the Beech-Nut Packing Company. I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe, that they thought that Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes was the product of the Beech-Nut Packing Company.

I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package, and I regard the product of cigarettes as an entirely distinct line from gum or candies.

Cross Examination.

522 I have handled the Lorillard tobacco products for many years and have known from time to time the Lorillard salesmen who frequently called in my store for orders.

I have about six hundred customers per day. I have one other clerk beside myself, who is usually in the store with me. I have a busy downtown store and haven't much time to talk to customers. The customer hardly ever asks who makes the tobacco or cigarettes he is purchasing.

I have made no effort to remember any inquiries, com-

ments, or remarks as to who makes the Beech-Nut Scrap Tobacco or Beech-Nut Cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any. 3523

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if H. CLYMER were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows: 3524

Direct Examination.

My name is H. CLYMER. I am of legal age and am a retail tobacconist. I am the manager of a store located at 364 Windsor Avenue, Hartford, Connecticut, which store is located in the district known as the East Side, and is one block from No. 78 Village Street. I have been in the retail tobacco business for the past fifteen years.

I have sold Beech-Nut Scrap Tobacco for five years and Beech-Nut cigarettes ever since they came on this market. I know both of these products are manufactured by the Lorillard Tobacco Co. I sell Beech-Nut chewing gum and Beech-Nut Mints, both of which articles I have always known to be the products of the Beech-Nut Packing Company. 3525

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought that Beech-Nut scrap Tobacco or Beech-Nut cigarettes was the product of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct

3526 class of merchandise from chewing gum, candy or other food products. I have never seen a package put up by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

I sell Uncle Sam Tobacco and Uncle Sam Playing Cards. These two articles are not manufactured by the same concern.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

3527

Cross Examination.

I have handled Lorillard tobacco products for many years and have known the Lorillard salesmen. They frequently come into my store to take orders.

I have a busy store and have not much time to talk to customers or much opportunity to hear what they are saying. A customer seldom asks who makes the tobacco or cigarettes he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

3528

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

3529

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if B. H. PIERCE were called as a witness on behalf of P. Lorillard Co., Defendant, he would testify as follows:

Direct Examination.

My name is B. H. PIERCE and I am of legal age. I am a clerk in a first class residential drug store, located at 247 Sigourney Street, Hartford, Connecticut. This store is located two blocks from the store run by C. P. Case at 597 Albany Avenue, Hartford, Connecticut.

3530

There are, as a rule, two clerks on duty in this store. I have sold Beech-Nut Scrap Tobacco and Beech-Nut cigarettes in this store for several years, and have always known that both of these products were manufactured by the Lorillard Tobacco Co. We also handle Beech-Nut chewing gum and Beech-Nut Mints, which I know to be products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought that Beech-Nut Scrap Tobacco or Beech-Nut cigarettes was the product of the Beech-Nut Packing Company.

3531

I regard tobacco and cigarettes as an entirely distinct class of products from chewing gum and mints, and I have never heard of a candy or food concern, which manufactured any tobacco products, nor have I ever seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

No Lorillard salesmen, in selling any of their products to me, ever made any remarks which indicated to me that there was any connection between the Beech-

3532 Nut cigarettes or the Beech-Nut Scrap Tobacco, and the Beech-Nut Packing Company.

I sell Velvet Tobacco and Velvet Skin Lotion, Spearmint Tooth Paste and Spearmint chewing gum, Diamond Dyes and Diamond Ginger Ale. None of these products are manufactured by the same concern.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

3533

Cross Examination.

I am familiar with the Lorillard Tobacco products and know their salesmen. My store is in a thickly populated residential district and I am kept pretty busy. I have not much time to talk to customers or much opportunity to hear what they are saying. A customer hardly ever asks who makes the tobacco or cigarettes he is buying.

3534

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if I. KAUFMAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is I. KAUFMAN. I am of legal age and am a druggist by occupation. My store is located at 633 Albany Avenue, Hartford, Connecticut, and is located one block from the store run by C. P. Case at 597 Albany Avenue. In addition to drugs we sell soda, candy and tobacco. We serve about five hundred customers a day.

3536

I have sold Beech-Nut Scrap tobacco for the past four years and Beech-Nut cigarettes since they appeared on this market. I know both of these products to be manufactured by the Lorillard Tobacco Co. I also handle Beech-Nut chewing gum and Beech-Nut Candies, and know that these articles are put out by the Beech-Nut Packing Company.

When the Beech-Nut cigarette first appeared on this market I remember that two or three persons asked me whether the Beech-Nut cigarette was manufactured by the same company that manufactured the Beech-Nut chewing gum. I told them that this was not the case and that the Beech-Nut cigarette was the product of the Lorillard Tobacco Co., whereas the gum was put out by the Beech-Nut Packing Company. These questions made a distinct impression on my mind, and I can positively state that I never heard more than two or three such remarks, and that these were made when the cigarette first came on the market.

3537

3538 I regard tobacco and cigarettes as an entirely unrelated class of products from gum or candies, and I have never heard of a candy or food product concern which manufactured any tobacco. I have never seen a package put out by the Beech-Nut Packing Company that looked like either a scrap tobacco or cigarette package.

Cross Examination.

3539 I have been handling tobacco for some years and am familiar with the different brands. I have handled many of the Lorillard tobacco products and know the Lorillard salesmen who come into my store to take orders.

I am kept pretty busy waiting on my trade and do not pay a great deal of attention to what customers are saying.

I have made no particular effort to remember any inquiries, remarks or comments as to who made the Beech-Nut Scrap Tobacco or Beech-Nut cigarettes, and had no reason to do so. When I say I only heard two or three inquiries, remarks or comments as to whether the Beech-Nut cigarettes were made by the Beech-Nut gum people, I mean I can not now remember any more than that.

3540

Re-direct Examination.

In my direct examination the two or three remarks which I referred to that I did hear when the Beech-Nut cigarettes first appeared, made a distinct impression on me, and if I had heard a considerably greater number than that I think I would have remembered the fact.

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STIPULATION.

It is STIPULATED by and between the parties hereto, through their respective counsel, that if the men whose names and addresses here appear, to wit:

C. R. DENSMORE, Druggist, 159 Washington St.,
Hartford, Conn.,

H. LEIBOWITZ, Druggist, 990 Broad St., Hartford,
Conn.,

were called as witnesses on behalf of P. Lorillard Co.,
defendant, they would each testify as follows:

3542

Direct Examination.

I am of legal age. In addition to drugs I sell in my store a varied line of merchandise, including such articles as stationery, fountain pens, toilet articles, confections, and tobacco.

I have sold Beech-Nut Scrap tobacco for the past five years and Beech-Nut cigarettes since they first came on this market about two years ago. I have always known that both of these products were manufactured by the P. Lorillard Co. I also sell Beech-Nut chewing gum and Beech-Nut Candies, which products I know to be put out by the Beech-Nut Packing Company.

3543

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which would lead me to believe that they thought that Beech-Nut Scrap Tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum or candy, and I have never heard of a candy or food products concern which manufactured any tobacco products. I

3544 have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

Cross Examination.

I have handled tobacco products for some years and am familiar with the different brands. I am kept pretty busy in my store and have not paid much attention to what people were saying about tobacco or cigarettes. The customer hardly ever asks who makes the tobacco or cigarette he is buying.

3545 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

3546 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

3547

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if the men whose names and addresses here appear, to wit:

E. F. KILLIAN, 627 Park Street, Hartford, Conn.,
T. WHITE, 638 Park Street, Hartford, Conn.,
WILLIAM FOSTER, Connecticut Mutual Building,
Main and Pearl Streets, Hartford, Conn.,
GUS STEINMEYER, 31 Pearl Street, Hartford, Conn.,
WILLIAM MOLUMPY, 697 Main Street, Hartford,
Conn.,

3548

were called as witnesses on behalf of P. Lorillard Co., defendant, they would each testify as follows:

Direct Examination.

I am of legal age and am the manager of a retail store where we sell confections and tobacco products. I have sold Beech-Nut Scrap Tobacco for the past five years and Beech-Nut cigarettes since they first came on this market about two years ago.

I have always known that both of these products were manufactured by the P. Lorillard Co., and I have long known of that concern as one of the oldest and largest of the tobacco companies. I also handle Beech-Nut chewing gum and Beech-Nut candies, and I know that these products are put up by the Beech-Nut Packing Company.

3549

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought that Beech-Nut Scrap Tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3550 I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum and candy, and I have never heard of a confection or food products company which manufactured any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

Cross Examination.

3551 I have handled tobacco products for some years and am familiar with the different brands. I am kept pretty busy in my store and have not paid much attention to what people were saying about tobacco or cigarettes. The customer hardly ever asks who makes the tobacco or cigarettes he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap Tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

3552

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

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Testimony taken at New Haven, Connecticut, August 7th, 1923, pursuant to adjournment at Hartford, Connecticut, the parties represented as before.

MAXWELL C. DURHAM, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Preston, as follows,

Q. 1. Mr. Durham, will you please state your name, age, occupation and business address?

A. Maxwell C. Durham, age 37, cigar dealer at 37 Church Street and 129 Church Street, New Haven.

3554

Q. 2. Mr. Durham, do you operate more than one store in New Haven?

A. Yes, two of them.

Q. 3. Are they both retail tobacco stores?

A. Yes.

Q. 4. How long have you been in the retail tobacco business?

A. For myself?

Q. 5. Yes.

A. I have been eighteen years in the business.

Q. 6. Do you wait on customers yourself the greater part of the time?

3555

A. Yes.

Q. 7. About how many customers do you have a day in your store and at your stands altogether, approximately?

A. About twelve to thirteen hundred customers.

Q. 8. Mr. Durham, do you sell Beech-Nut Scrap Tobacco like the package I show you? (Mr. Preston showing the witness package of Beech-Nut Scrap Tobacco.)

A. Yes.

556 Q. 9. How long have you handled that brand of tobacco?

A. Well, I have been handling it for some time.

Q. 10. Could you say about how many years you have handled it?

A. I should say about between ten and twelve years or so.

Q. 11. Is it a good seller?

A. Yes, a pretty good seller.

Q. 12. Do you know what company manufactures it?

A. Lorillard.

557 Q. 13. Do you sell Beech-Nut cigarettes like the package I show you? (Mr. Preston showing the witness a package of Beech-Nut cigarettes.)

A. Yes.

Q. 14. How long have you handled them, Mr. Durham?

A. Ever since they came out.

Q. 15. Do you know what company manufactures them?

A. Yes, Lorillard.

Q. 16. Do you sell Beech-Nut chewing gum like the package I show you? (Mr. Preston showing the witness a package of Beech-Nut chewing gum.)

558 A. Yes.

Q. 17. Do you know who makes that?

A. Yes, the Beech-Nut Gum Company.

Q. 18. Do you sell Beech-Nut Mints and Candies?

A. Yes.

Q. 19. Do you know what company makes them?

A. Yes, the same people.

Q. 20. Mr. Durham, did any Lorillard salesman ever make any remark to you which indicated to you that they thought that there was any connection between the makers of the Beech-Nut Tobacco and the Beech-Nut cigarette, and the makers of the Beech-Nut chewing gum?

A. No, never.

3559

Q. 21. Did you ever hear any remarks, inquiries, or comments among your customers or others to the effect, or which led you to believe, that they were under the impression that the Beech-Nut chewing gum was made by the same company that makes the Beech-Nut tobacco and Beech-Nut cigarettes?

A. No. I never heard anything like that. Most of the people know that tobacco and cigarettes are made different than candy and gum.

Q. 22. Do you regard tobacco and cigarettes as the same or a distinct and separate line of merchandise from candies or gum?

3560

A. Yes.

Q. 23. Which do you mean?

A. I think tobacco is entirely different than the gum, sure.

Q. 26. Did you ever see a package put out by the makers of Beech-Nut gum which looked like either a Beech-Nut tobacco or Beech-Nut cigarette package?

A. No, I think it is a different label entirely so far as the label is concerned.

Q. 27. So far as the general appearance of the package is concerned, did you ever see a package put out by the makers of Beech-Nut gum that looked, in general, like a package of Beech-Nut tobacco or Beech-Nut cigarettes?

3561

A. No.

Mr. Preston: That is all.

(Direct Examination Closed.)

3562

Cross Examination.

By Mr. Johnson:

X-Q. 1. Mr. Durham, where is your tobacco stand located?

A. 129 Church Street.

X-Q. 2. What kind of a building is that in?

A. The Second National Bank Building.

X-Q. 3. Is that one of the larger office buildings in New Haven?

A. Yes.

3563

X-Q. 4. And is your store at the entrance where people pass coming in and out of the building?

A. Yes.

X-Q. 5. You say you have a retail store in addition to the one in the Second National Bank Building?

A. Yes, at 37 Church Street.

X-Q. 6. What is the name of that store?

A. The Durham Cigar Company.

X-Q. 7. How long have you been in the tobacco business altogether?

A. Eighteen years.

3564

X-Q. 8. How much of that time have you been in the retail trade?

A. Always.

X-Q. 9. In what parts of the country?

A. Right here in New Haven.

X-Q. 10. How long have you had this stand and the store you speak of?

A. This stand I have had since 1916 and the store I have had since the 10th, it will be two years this month, August 10th.

X-Q. 11. How long have you been handling the P. Lorillard Co. products?

A. Always.

X-Q. 12. Always?

A. Since I was in the business.

3565

X-Q. 13. Have you handled a great many of their products?

A. Yes, I have.

X-Q. 14. Can you name a few of their tobaccos and cigarettes that you have handled?

A. Murads, Egyptian Dieties, Helmars, Beech-Nut cigarettes, Beech-Nut Tobacco, and a lot of others I can't think of now.

X-Q. 15. Have you handled large quantities of the Lorillard products before you started to handle the Beech-Nut tobacco and cigarettes?

3566

A. Yes, I always sold them.

X-Q. 16. Have you known the Lorillard salesmen?

A. Yes, I know them by coming in, yes, sure.

X-Q. 17. Do you know the Lorillard salesman here now?

A. Yes.

X-Q. 18. What is his name?

A. Which one?

X-Q. 19. What ones do you know here?

A. There is Mr.—this gentleman here.

X-Q. 20. Do you know his name?

A. Yes, he is a New Haven man. Let's see, I can't think of his name now. What is his name, Rickert? Something like that.

3567

X-Q. 21. Have you known the Lorillard salesmen for some years?

A. Only by coming in. I can't think of the name for you. I know every one of them and who they represent.

X-Q. 22. You know who they represent?

A. Yes.

X-Q. 23. When you first saw a package of the Beech-

568 Nut chewing tobacco, whose product did you think it was?

A. I will have to look it up. Naturally any man that knows the business a good deal can tell easy where it is made.

X-Q. 24. You knew that because you were in the tobacco business?

A. Sure.

X-Q. 25. And because you were familiar with the Lorillard products?

A. Yes, sure.

569 X-Q. 26. When you first saw the package of Beech-Nut cigarettes, whose product did you think it was?

A. You naturally can't tell until you look at the package. It may be American Tobacco Company or Lorillard or Reynolds Tobacco Company.

X-Q. 27. Were you handling Beech-Nut chewing gum or any of the Beech-Nut hard candies at the time you started to handle either the Beech-Nut chewing tobacco or the Beech-Nut cigarette?

A. Yes, I always handled that.

X-Q. 28. Had you handled much of the chewing gum or candy?

A. Yes, I sell a lot of it.

570 X-Q. 29. [Didn't you have any doubt at that time as to whether these Beech-Nut cigarettes or Beech-Nut tobacco might not be made by the makers of the Beech-Nut chewing gum?

A. No, not a man that knows the business like I do. I can tell who makes the gum or tobacco.

X-Q. 30. Mr. Durham, in your experience in the retail trade, do you find that a customer, when he comes in, asks for a tobacco or a cigarette by the name of the maker?

A. No, they ask for the name.

X-Q. 31. Like what?

3571

A. Beech-Nut cigarettes or Beech-Nut tobacco, scrap or Camels.

X-Q. 32. Do they ask for just Camels?

A. Yes, Camels, Lucky Strikes or Chesterfields.

X-Q. 33. They never ask for the maker?

A. They never ask for the maker. I don't believe there is hardly any consumer that knows who makes the stuff as far as that is concerned; as long as they know by the name, that is all they want to know.

X-Q. 34. Then would you say that tobacco and cigarettes sell by the brand name?

A. Yes, by the name. That is all they can think of. They never tell us who makes the cigarettes. They ask the name—Murads or Chesterfields, Camels or Lucky Strikes, or something like that.

3572

X-Q. 35. Are you kept pretty busy waiting on customers?

A. Most of the time. I take care of most of them.

X-Q. 36. Do you have much time to talk to customers?

A. Oh, occasionally, yes.

X-Q. 37. At the time the Beech-Nut chewing tobacco came out, didn't you hear any remarks or questions by people as to whether it was made by the Beech-Nut chewing gum people?

3573

A. I don't remember anything like that.

X-Q. 38. And the same thing with regard to the Beech-Nut cigarettes?

A. No, in fact I remember distinctly when the first cigarette came out, it was advertised in the paper and a fellow asked me what is that, a new Lorillard package of Beech-Nut cigarettes?

X-Q. 39. But in most cases, Mr. Durham, you had no way of knowing, did you, who the customers who

3574 were at your stand, thought made the Beech-Nut cigarette?

A. That I can't tell you.

X-Q. 40. You had no way of knowing?

A. I had no way of knowing. I know they would come in and ask for the names and I give it to them. For instance, there has a new cigarette just come out. The customer looks at the name and reads that. He comes and says to me: "Give me a package of Rosedale cigarettes". That is a new one just out.

3575 X-Q. 41. When you say then, that you didn't hear any remarks, inquiries or comments by people as to whether the Beech-Nut cigarette or Beech-Nut Scrap Tobacco were put out by the same people that made the chewing gum, you mean you don't remember hearing any such remarks?

A. No.

(Cross Examination Closed.)

Re-direct Examination.

By Mr. Preston:

3576 R-D Q. 1. Mr. Durham, did you ever hear of a chewing gum, candy or food products concern which manufactured any tobacco products?

A. No.

R-D Q. 2. If you had heard any considerable number of remarks among your customers or others which indicated that they thought that the Beech-Nut gum people were making the Beech-Nut cigarettes or Beech-Nut Scrap Tobacco, do you think you would have remembered it?

A. Yes, I would, sure.

R-D Q. 3. When you first saw this package of Beech-Nut scrap tobacco and Beech-Nut cigarettes, did you

or did you not wonder whether it was made by the Beech-Nut Packing Company, the people who make the Beech-Nut gum? 3577

A. As I said before, any man that knows the business, the minute any new stuff comes out, they can tell usually where it comes from. First of all I look at the stamp, the factory number, and a fellow who knows anything about it, can tell where it comes from. It isn't the consumer. The consumer doesn't ask. The man who knows where they come from is the dealer and it is very easy to tell. In fact, when a customer comes in and brings in a cigarette box without a wrapper on or a box and where there is no name on the box, all I have to do is to look at the factory number and then I can look that up right after that. I have done it many times. 3578

Mr. Preston: That is all.
(Re-direct Examination Closed)

Re-cross Examination.

By Mr. Johnson:

R-X Q. 1. How has Beech-Nut Scrap tobacco sold with you? 3579

A. Pretty fair. We sell a lot of it.

R-X Q. 2. Did it sell well right at the start when you first began handling it?

A. I just can't remember how it did start, but it went pretty good. But I consider Beech-Nut in the third class with Level Head; especially in New Haven it is a good seller. Beech-Nut is probably a third or fourth class tobacco.

R-X Q. 3. How have the Beech-Nut cigarettes sold with you?

A. Not very big.

3580 R-X Q. 4. Did they sell better at first than they have since?

A. Pretty well, but I don't think they are much of a success in New Haven.

R-X Q. 5. Are you selling many of them now?

A. No, not very many. We buy them only in 1,000 lots where the others we buy in 10,000 lots.

R-X Q. 6. Have you heard any complaints as to the quality of the Beech-Nut cigarettes from users?

A. No, I haven't.

Mr. Johnson: That is all.

(Re-cross Examination Closed)

(Deposition Closed.)

(Signature of witness waived)

3581

BARNETT DICKSTEIN, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Preston, as follows:

Q. 1. Will you please state your name, age, occupation and business address?

3582 A. Barnett Dickstein, age 38, 849 Grand Avenue, New Haven, Connecticut, general store.

Q. 2. How long have you been in this business, Mr. Dickstein?

A. Well, for the last six years; six and a half years or so.

Q. 3. Would you name some of the kinds of merchandise that you sell?

A. I don't know from where to start.

Q. 4. Just name a few of them, if you please?

A. In the line of groceries, tobacco or candy; it depends on what you are interested in?

Q. 5. Do you sell confectionery articles?

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A. Yes, I sell confectionery articles.

Q. 6. Do you sell toys?

A. Yes, I sell toys, tobacco, groceries, ice cream sodas, and beers.

Q. 7. How large is your store, Mr. Dickstein—about?

A. My store is as large inside, I believe, 16 by 60 feet.

Q. 8. About how many customers a day do you have?

A. Well, how many customers? I shouldn't be surprised if we have about a couple of hundred a day.

Q. 9. Do you sell Beech-Nut Scrap tobacco like the package I am showing you? (Mr. Preston shows the witness a package of Beech-Nut Scrap Tobacco.) 3584

A. Yes, sir, we do sell Beech-Nut Scrap tobacco.

Q. 10. How long have you sold that?

A. Since I am in the tobacco game for the last four years.

Q. 11. Do you know what company makes it?

A. Yes, sir.

Q. 12. What company makes it?

A. Lorillard.

Q. 13. Is it a good seller?

A. Yes, sir, it sells pretty good.

Q. 14. Do you sell Beech-Nut cigarettes like the package I show you? (Mr. Preston showing the witness a package of Beech-Nut cigarettes.) 3585

A. Yes, sir.

Q. 15. How long have you sold them?

A. I believe Beech-Nut cigarettes I sell about three years.

Q. 16. Do you know what company makes them?

A. The same company as the tobacco.

Q. 17. Do you sell Beech-Nut chewing gum like the package I am showing you? (Mr. Preston showing the witness a package of Beech-Nut chewing gum.)

3586 A. Yes.

Q. 18. Do you know who makes that?

A. Yes, the Beech-Nut gum people.

Q. 19. Do you sell Beech-Nut Mints or Beech-Nut Candies?

A. Yes, sir. It didn't sell much so I cut them out.

Q. 20. Do you know what company makes the candies?

A. The candies—I believe it is the same people. Yes, I know it is.

Q. 21. Mr. Dickstein, did any Lorillard salesman ever make any remark to you, which indicated to you
3587 that there was any connection between the makers of the Beech-Nut gum and the cigarette?

A. No, sir.

Q. 22. Did you ever hear any inquiries, comments or remarks among your customers or others to the effect, or which led you to believe that they thought the Beech-Nut chewing gum was manufactured by the same company that makes the Beech-Nut cigarettes or the Beech-Nut scrap tobacco?

A. No, sir.

Q. 23. Do you regard tobacco and cigarettes as the same or a separate and distinct line of merchandise
3588 from gum or candies or food products?

A. I believe it is a separate thing. I tell you it is very seldom anyone who chews Beech-Nut gum or any kind of gum, chews tobacco. There is some young fellows who chew tobacco and use gum but very seldom you find it.

Q. 24. Did you ever hear of a gum or candy or food products concern that made any tobacco products?

A. No.

Q. 25. Did you ever see a package put out by the Beech-Nut Packing Company that looked like either a Beech-Nut Scrap tobacco or a cigarette package?

A. I don't think so, no. I don't think there was any. The only label what is similar to it, is the Beech-Nut Jelly. It isn't much different but it can't come to the comparison of the same label as the Beech-Nut Cigarettes or Beech-Nut tobacco. 3589

Q. 26. I don't think you quite understand my question. Do you think the Beech-Nut gum package looks like either a Beech-Nut cigarette package or a scrap tobacco package?

A. No, it can't be the same, to look the same as the package.

Q. 27. Mr. Dickstein, do you sell Velvet Pencils?

A. Yes, sir, we do. 3590

Q. 28. Do you sell Star Soap?

A. Yes, sir.

Q. 29. Do you sell Star Tobacco?

A. We sell Star tobacco.

Mr. Johnson: I object to this entire line of questions and answers in regard to articles bearing the same name on the ground that it is incompetent, immaterial and irrelevant. It is stipulated that this objection will apply to all questions and answers along this same line.

Q. 30. Do you sell Star Washing Fluid? 3591

A. No.

Q. 31. Do you sell Sunshine Biscuits?

A. Yes.

Q. 32. Do you sell Sunshine cigarettes?

A. Yes.

Q. 33. Are any of these articles I have mentioned manufactured by the same company?

A. No, different companies.

Q. 34. Do you sell Polo canned goods?

A. Yes.

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- 592 Q. 35. Do you sell Polo cigarettes?
A. Yes.
- Q. 36. Do you sell Climax Chocolate Dates?
A. Yes. There is a short season on that.
- Q. 37. You have sold Climax Chocolate Dates?
A. Yes, I have.
- Q. 38. Do you sell Climax Tobacco?
A. Yes.
- Q. 39. Do you sell Ever Ready razor blades?
A. Yes.
- Q. 40. Do you sell Ever Ready search Lights?
A. Yes, I sell them.
- 593 Q. 41. Do you sell Apple Tobacco?
A. Yes.
- Q. 42. Do you sell Apple Chewing Gum?
A. Yes.
- Q. 43. Are any of those articles that I have named manufactured by the same company?
A. No, sir.
- Q. 44. Do you sell Blue Ribbon Salad Dressings?
A. Yes, sir.
- Q. 45. Do you sell Blue Ribbon Playing Cards?
A. Yes.
- Q. 46. Do you sell Blue Ribbon Starch.
594 A. No. Oh yes, I do. There is a Blue Ribbon Starch.
- Q. 47. Do you sell Gem razor blades?
A. Yes, sir.
- Q. 48. Do you sell Gem nail clippers?
A. Yes, we do.
- Q. 49. Mr. Dickstein, are any of those articles that I have named manufactured by the same company?
A. No, they ain't. It is different manufacture.
- Q. 50. Mr. Dickstein, do you know it to be a common thing for articles in a different class, made by different companies, to be sold under the same name?

A. What, two articles the same by different companies, is that what you mean? 3595

Q. 51. Articles with the same name of a different class, manufactured by different companies?

A. Well, there is many articles that we sell with the same name.

Q. 52. Are those articles made by different companies?

A. Those articles are made by different companies.

Mr. Preston: That is all.

(Direct Examination Closed)

Cross Examination.

3596

By Mr. Johnson:

X-Q. 1. Do you have a tobacco and cigarette department in your general store?

A. Yes, sir.

X-Q. 2. What is the name of your store?

A. Well, I call it a general store.

X-Q. 3. I mean, what name have you over the front?

A. I have nothing, no name at all on the front.

X-Q. 4. What is the street address?

A. 849 Grand Avenue. That is the only thing I have got on the store. 3597

X-Q. 5. Is it known as the Dickstein Grocery Store?

A. Yes, the Dickstein Grocery Store, yes, sir.

X-Q. 6. Where is your tobacco and cigarette section located inside the store?

A. Up near the front, right in the front.

X-Q. 7. Near the door?

A. Yes.

X-Q. 8. About how much space does it occupy?

A. How much space? Why, I should judge it is about twenty feet; every bit of it.

598 X-Q. 9. How wide?

A. By five feet wide.

X-Q. 10. How long have you handled tobacco?

A. Well, I handled it since three years, since I built this over. I handle it all the time since I am in the store, that is six years, but you know, like all the groceries, just a little bit, but now I am going to specialize on tobacco.

X-Q. 11. Had you handled tobacco longer than six years ago?

A. No, I wasn't in that line at all.

599 X-Q. 12. Are you familiar with the different brands of cigarettes and tobacco?

A. Yes, I am.

X-Q. 13. Have you handled any of the P. Lorillard Co. products?

A. Yes, sir.

X-Q. 14. What are some of them that you have handled. Just name a few?

A. Well, we sold Beech-Nut cigarettes, Beech-Nut Scrap, Level Head tobacco, Union Leader tobacco, Sterling tobacco—no, that is not a Lorillard I don't think—Eureka, Old Fashioned.

X-Q. 15. Will you name some of the cigarettes?

600 A. Cigarettes, well, that is the only kind they have, Beech-Nut cigarettes. That is all they got.

X-Q. 17. Who makes the Camel cigarettes?

A. Camels—I forget the name. Camel cigarettes—Lorillard makes the Camels. No, Reynolds makes the Camels.

X-Q. 18. Who makes the Fatimas?

A. Fatimas are made by the same people as Chesterfields and others, I forget the names of them.

X-Q. 19. Who makes Lucky Strikes?

A. The same tobacco people.

X-Q. 20. Who makes Egyptian Dieties?

A. Lorillard makes them.

3601

X-Q. 21. Have you handled those brands?

A. Yes.

X-Q. 22. Murads, who makes those?

A. That's right, the Lorillard Co. makes Murads.

X-Q. 23. Have you handled them?

A. Sure. I handled a lot of them. Helmars also. I forget the whole thing.

X-Q. 24. Do you know the Lorillard salesmen?

A. Yes, I do.

X-Q. 25. Do they come into your store frequently?

A. Yes, they come in and take orders.

X-Q. 26. How many employes have you in your store? 3602

A. Not any.

X-Q. 27. Waiting on customers?

A. Only my nephew helps me out and my wife, of course, comes down once in a while, and my daughter.

X-Q. 28. But usually there are two of you waiting in the whole store—waiting in all different parts of it?

A. Yes.

X-Q. 29. Are you kept pretty busy waiting on customers?

A. Yes, always.

X-Q. 30. Do you have much time to talk to customers in at the tobacco counter? 3603

A. The way we sell them we throw at them the goods and they go.

X-Q. 31. Have you made any effort to remember any questions or remarks made by people as to whether the Beech-Nut Scrap Tobacco and Beech-Nut cigarettes are made by the same people that make the Beech-Nut chewing gum?

A. No, it never came to that.

X-Q. 32. I mean, have you made any particular effort to remember—have you tried to remember during the

3604 last couple of years whether people were asking such questions?

A. No, I never had it in my mind.

X-Q. 33. Have you heard any such questions?

A. No.

X-Q. 34. When you say you haven't heard any such questions, remarks or comments, you mean you don't remember having heard any?

A. No. It never come to talk about it, it never come to talk about it.

X-Q. 34. You don't remember ever having talked to any one about it?

3605 A. No.

X-Q. 35. Did you handle Beech-Nut chewing gum at the time you first took on Beech-Nut Scrap tobacco?

A. I handled Beech-Nut chewing gum, in fact, before that Beech-Nut Scrap Tobacco because Beech-Nut gum I sold since I have the store.

X-Q. 36. When you first saw a package of Beech-Nut Scrap Tobacco, who did you think made it?

A. Well, the Lorillard.

X-Q. 37. Why was that?

3606 A. Why, because I see the name on the package. I seen the name. It is printed on the package that the Lorillard people make it. That is the only thing that makes me know. It is printed on the carton and package and every place.

X-Q. 38. In your experience in the tobacco business have you found that customers very often ask who makes the tobacco and cigarette they are buying?

A. Well, on a new cigarette they do, but on an old cigarette never. On a new cigarette—if they see something new, they ask who makes it.

X-Q. 39. Didn't you hear any questions, then, in regard to the Beech-Nut cigarettes when they came out as to who made them?

A. No.

X-Q. 40. When a customer comes in to buy tobacco or cigarettes, what do they usually ask for? 3607

A. If they come in and say they just want cigarettes, we ask them what they want.

X-Q. 41. Then what do they say?

A. They ask for the name.

X-Q. 42. Like what?

A. If they ask for instance they ask for Beech-Nut or Beech-Nut tobacco or Lucky Strikes, Murads, Helmars, Meccas.

X-Q. 43. Did you ever have a customer ask you for Lucky Strikes made by the American Tobacco Company?

A. No.

X-Q. 44. Or Camels made by the Reynolds Company? 3608

A. No, sir, if they ask for Camels, they ask for Camels. If a man comes in and asks for cigarettes, it doesn't concern them and they don't care to know who makes them.

X-Q. 45. They ask for the name of the brand?

A. Yes, they ask for the name of the brand. That is all they do.

X-Q. 46. They call the cigarette or tobacco by the name of the brand, do they?

A. That is how they know it.

X-Q. 47. How has the Beech-Nut Scrap tobacco sold with you? 3609

A. It sells pretty good. Well, I should judge about half a gross a week.

X-Q. 48. How has the Beech-Nut cigarette sold with you?

A. It is slow now because the Camels gave them a knock-out.

X-Q. 49. Did they sell better right at the start?

A. Yes. I always sold them big because, I tell you—not because the cigarette is different, but at that time

3610 the Camels was 15 cents straight and we sold these two for a quarter, but now we sell Camels two for a quarter and they rather take the Camels.

X-Q. 50. Did you ever hear any complaint as to the Beech-Nut cigarettes?

A. No, never.

Mr. Johnson: That is all.

(Cross Examination Closed.)

(Deposition closed.)

(Signature of witness waived.)

3611 PAUL SCHWARTZ, a witness called on behalf of the defendant, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by Mr. Preston, as follows:

Q. 1. Will you please state your name, age, occupation and the address of your store here?

A. Paul Schwartz, age 23, 680 Grand Avenue, New Haven, Conn., a clerk here.

Q. 2. Mr. Schwartz, what is your occupation?

A. I used to be a machinist's helper before.

Q. 3. Now what are you doing?

3612 A. Now; just running the store, that's all.

Q. 4. Do you sell tobacco in your store here?

A. All kinds of tobacco, cigars and cigarettes.

Q. 5. Do you sell periodicals?

A. Yes, all kinds.

Q. 6. Do you sell toilet articles?

A. No toilet articles.

Q. 7. Do you sell razor blades?

A. We sell razor blades.

Q. 8. Do you sell search lights?

A. We sell search lights, shoe polish, ink, stationery.

Q. 9. Do you sell candies?

3613

A. Yes, sir.

Q. 10. Do you sell soda water?

A. We sell soda water.

Q. 11. Mr. Schwartz, do you sell Beech-Nut Scrap tobacco like the package I show you? (Mr. Preston showing the witness a package of Beech-Nut Scrap Tobacco.)

A. Yes.

Q. 12. How long have you sold that?

A. Well, while I am in the store for three years we are selling it right along.

Q. 13. Do you sell Beech-Nut cigarettes like the package I show you? (Mr. Preston showing the witness a package of Beech-Nut cigarettes.)

3614

A. Yes.

Q. 14. How long have you handled that?

A. Three years, the same as the scrap.

Q. 15. Do you know what company manufactures those brands?

A. The Lorillard Co.

Q. 16. Do you sell Beech-Nut chewing gum like the package I show you? (Mr. Preston showing the witness a package of Beech-Nut chewing gum.)

A. Yes, we do.

3615

Q. 17. Do you know what company makes that?

A. That is a different company altogether. I don't know exactly the name of the company. They have no name on the product.

Q. 18. Were you ever under the impression that the Beech-Nut gum and the Beech-Nut cigarettes and Beech-Nut Scrap tobacco were all made by the same company?

A. No, I never was.

Q. 19. Did any Lorillard salesman ever make any remark to you which indicated that there was any con-

6 nection between the maker of the Beech-Nut gum and the maker of the Beech-Nut cigarettes and scrap tobacco?

A. No salesman made any remarks at all in connection with the Beech-Nut chewing gum or tobacco or cigarettes to me while I am here.

Q. 20. Did you ever hear any remarks, inquiries, or comments among your customers or others to the effect that, or which led you to believe, they were under the impression that Beech-Nut chewing gum was made by the company that makes the Beech-Nut cigarettes or Beech-Nut Scrap tobacco?

A. No.

7 Q. 21. Did you ever hear of a chewing gum company that manufactured any tobacco products?

A. No, not as I know of. I never heard of the Beech-Nut Tobacco Company making any candy or any kind of gum.

Q. 22. Do you regard tobacco as the same or a distinct and separate line of merchandise from chewing gum or candy?

A. Different altogether.

Q. 23. Mr. Schwartz, do you sell Eureka Chocolates in your store?

8 A. Eureka Chocolates, yes. Yes, I have the chocolates. They are in a stand there on the other side. On this side is the tobacco stand and there are no confections at all. If anybody wants any tobacco, they come on that side and if they want any candy, it is on this side. We have them separate on either side of the store.

Q. 24. Do you sell Eureka Tobacco?

A. Yes, sir.

Q. 25. Do you sell Star razor blades?

A. Star, yes.

Mr. Johnson: I object to the testimony of this witness along this line in regard to different ar-

ticles by the same name, on the ground that it is incompetent, immaterial and irrelevant. It is also stipulated that this objection is to apply to all questions and answers along this line without repetition. 3619

Q. 26. Do you sell Star tobacco, Mr. Schwartz?

A. No.

Q. 27. Did you ever sell Star Tobacco here?

A. No Star.

Q. 28. Do you sell Velvet pencils?

A. Yes.

Q. 29. Do you sell Velvet Tobacco?

A. Yes. 3620

Q. 30. Do you sell Apple chewing gum?

A. No Apple chewing gum.

Q. 31. Did you ever sell Apple chewing gum?

A. No.

Q. 32. Do you sell Apple tobacco?

A. Apple Plug chewing tobacco. We have that but no gum.

Mr. Preston: That is all.

(Direct Examination Closed.)

Cross Examination.

3621

By Mr. Johnson:

X-Q. 1. How long have you handled tobacco altogether?

A. Well, we weren't in this territory. We are here for about three years and we handled tobacco three years here, and five years in Cleveland we handled the same kind of a line.

X-Q. 2. What is the name of your store here?

A. H. Weinzimmer.

3622 X-Q. 3. Weinzimmer what. What do you call it?

A. A confectionery store, cigars and cigarettes.

X-Q. 4. A confectionery and tobacco store?

A. Yes, a confectionery and tobacco store.

X-Q. 5. You have been handling tobaccos for some thing like eight years altogether?

A. Yes, eight years altogether.

X-Q. 6. Are you pretty familiar with the different tobacco brands and cigarettes brands?

A. Sure.

X-Q. 7. Have you handled many of the Lorillard products?

3623 A. Yes, almost all the brands they make that would be used in the store.

X-Q. 8. Will you name just a few of them, both cigarettes and tobacco?

A. Level Head, Murads, Helmars, Turkish Trophies, Beech-Nut, Sensation and Comet.

X-Q. 9. Have you sold large quantities of the Lorillard products?

A. Yes, sir, we sell quite a large quantity.

X-Q. 10. Do you know the Lorillard salesman?

A. Sure I know them.

X-Q. 11. Do they come in to your store often?

3624 A. About every other week—twice a week—once a week or sometimes every other week. You know, whenever they are around here they always stop in here.

X-Q. 12. Do you give them pretty good sized orders?

A. Yes, sir.

X-Q. 13. Do you order tobacco and cigarettes from jobbers sometimes?

A. Yes.

X-Q. 14. Frequently?

A. Yes, yes. We order them whenever we run short. Otherwise we have large shipments coming in from

the Lorillard Co. when we have enough for a couple of weeks. If we run short we just run down to the jobber and get them. 3625

X-Q. 15. I show you a package of Beech-Nut chewing gum, which Mr. Preston showed you a few minutes ago and which is identical with one of the Plaintiff's exhibits in this case. I wish you would tell me whether you see the name of the Beech-Nut Packing Company on that package?

A. The Company's name is on here. That is, just the Beech-Nut Packing Company, but there is no name of the concern beside the Beech-Nut Packing Company like the Lorillard has their name on each of the products. 3626

X-Q. 16. Do you handle any other Beech-Nut products beside the chewing gum?

A. Yes, we have Life Savers there, the lime products.

X-Q. 17. You mean Beech-Nut Mints and Fruit Drops?

A. Orange and Lime Drops and Lemon Drops. Fruit products they call them.

X-Q. 18. Aren't they all made by the Beech-Nut Packing Company?

A. Yes. 3627

X-Q. 19. Then that is the name of the company that makes them?

A. Yes, the Beech-Nut Company.

X-Q. 20. So the name of the maker is on that package of chewing gum, isn't it?

A. Yes.

X-Q. 21. Are you kept pretty busy waiting on customers in the store?

A. Yes, sir.

X-Q. 22. Do you have much time to talk to customers at the tobacco stand?

3628 A. Why sure, if I have spare time I talk to them.

X-Q. 23. Do they very often ask you the name of the maker of the tobacco or cigarette they are buying?

A. Not all of them. Not many, but a few times. They hardly ever bother. If they come in they buy what they want and go right ahead.

X-Q. 24. Did anybody ever ask you who made the Beech-Nut Scrap Tobacco?

A. If they ask me I tell them the name is right on there.

X-Q. 25. Did anybody ever ask you?

3629 A. Not many people. They don't come in and ask any questions. They just come in and get what they want.

X-Q. 26. Maybe a few did ask you who made Beech-Nut Scrap Tobacco?

A. Yes, if they did ask me I just answered them who makes it, that is all.

X-Q. 27. Did anybody ever ask you who makes the Beech-Nut cigarette?

A. Yes, when they first came out they asked me who makes them and I told them that the Lorillard Co. makes them.

3630 X-Q. 28. Did anybody ever ask you if the Beech-Nut Scrap Tobacco was made by the same people that made the Beech-Nut chewing gum?

A. No.

X-Q. 29. Did any one ever ask you if the Beech-Nut cigarettes were made by the same people who made the Beech-Nut chewing gum?

A. Not while I was here. They never asked me anything about that.

X-Q. 30. Do people usually ask for tobacco or cigarettes by the name of the brands like Camels or Lucky Strikes?

A. Yes, they just say whatever they want; Beech-Nut cigarettes or Luckys, just the name of the brand. 3631

X-Q. 31. Did you ever have any one ask you for Camels made by the Reynolds Company, like that?

A. No, they always say the name of the cigarette. They don't ask me for Reynolds' Cigarettes. They always say: "Camels", "Lucky Strikes", "Fatimas", or whatever they ask for they ask for the name of the cigarette.

X-Q. 32. When you say you never heard any one ask whether the Beech-Nut Scrap Tobacco or Beech-Nut cigarettes were made by the same people who makes this Beech-Nut gum, you mean you don't remember hearing any one say it? 3632

A. No, I don't remember it. Possibly they did but I couldn't remember if they did. If they did ask me I just tell them what I know about it.

Mr. Johnson: That is all.

(Cross Examination Closed.)

Re-direct Examination.

By Mr. Preston:

R-D. Q. 1. Mr. Schwartz, if many people had asked you if Beech-Nut cigarettes were made by the same company that makes the Beech-Nut chewing gum, do you think you would have remembered it? 3633

A. Why, I would have remembered who makes them because the name is right on there and I would tell them.

R-D Q. 2. If many people had asked you whether the same company made the gum that make the cigarette, do you think you would have remembered that they had asked you, if you had heard a great many of those questions?

3634 A. I would remember all right if people had asked me the question.

Mr. Preston: That is all.

(Re-direct Examination Closed.)

(Deposition Closed.)

(Signature of Witness waived.)

STIPULATION.

IT IS HEREBY STIPULATED by and between counsel for the respective parties, as follows:

3635

On August 25th, 1921, Plaintiff's Exhibit No. 2 (West Haven Drug Store Display) introduced as plaintiff's exhibit in the deposition of John F. Griffin of New Haven, Connecticut, was taken by Frank Madden, this photograph showing two window panels, designated as Nos. 3 and 4, of the display window of the drug store of William J. Coughlan, at Elm Street and First Avenue, West Haven, Connecticut; the display panel No. 3 showing display advertisements of Beech-Nut chewing gum, while display window No. 4 shows tobacco display advertisements including two display panels of Beech-Nut cigarettes; that in this plaintiff's exhibit the words "P. Lorillard Co." appear on the upper smaller Beech-Nut cigarette advertising panel while the words "P. Lorillard Co." do not show upon the picture of the Beech-Nut cigarette package on the lower Beech-Nut cigarette panel.

3636

That subsequently, on or about August 30th, 1921, Frank H. Simonds, a commercial photographer, located on Chapel Street, New Haven, Connecticut, at the request of counsel for the defendant, took a picture or photograph of panel No. 4 of this Coughlan window, or the panel showing the tobacco advertisements, the pa-

nels and advertising in this window having been undisturbed and being the same as when plaintiff's photograph was taken, and that, as will appear from this Simonds' photograph of West Haven Drug Store Display in the Coughlan Pharmacy, which is here introduced in evidence as Defendant's Exhibit No. 11, the lower or larger Beech-Nut advertising panel shows the words "P. Lorillard Co." on the photograph of the package of Beech-Nut cigarettes delineated on the panel, and that, as a matter of fact, this name "P. Lorillard Co." did so appear upon this lower larger Beech-Nut advertising panel at the time plaintiff's exhibit photograph No. 2, above referred to, was taken on August 25th, 1921, although these words do not show on that photograph.

That if Frank H. Simonds, the photographer who took the defendant's exhibit picture on August 30th, 1921, were called as a witness he would testify that he took the picture as aforesaid, that he took such a picture with a special type of photographic plate known as a pan-chromatic plate, which is used in the art by commercial photographers for taking photographs of objects or articles when it is desired to clearly show matter printed in distinguished or different colors, as, for example, black on red, while the plaintiff's photograph, taken by Mr. Madden on behalf of the plaintiff and appearing herein as Plaintiff's exhibit No. 2, was taken with an ordinary photographic film or plate, which does not always contradistinguish the colors, especially as here—black and red—and it is further stipulated that in the following deposition of William J. Coughlan, on behalf of the defendant, the photographs shown to him as pictures of his display window, are those mentioned in this stipulation.

The Coughlan Drug Store window has four panels, which, for convenience, the parties have called as follows:

3640 The westernmost one or that nearest the door, panel No. 1;

A large, more central panel adjoining No. 1 is panel No. 2;

The third and smaller panel next to the large panel and opposite to No. 1, is Panel No. 3;

And the easternmost panel, next to panel No. 3, is Panel No. 4.

WILLIAM J. COUGHLAN, a witness called on behalf of the defendant, being first duly sworn, deposes and says in answer to interrogatories propounded to him by Mr. Cavanagh, as follows:

Q. 1. What is your name, residence and occupation?

A. William J. Coughlan, Roswell Avenue, Sea Gate, Connecticut. My occupation is that of druggist and I am the proprietor of a drug store located at the corner of Elm Street and First Avenue, West Haven, Connecticut.

Q. 2. Mr. Coughlan, I show you two photographs which are in this case, one being marked "Plaintiff's Exhibit No. 2, West Haven Drug Store Display" and the other "Defendant's Exhibit No. 11", "Simonds' photograph of West Haven Drug Store Display at the Coughlan Pharmacy." I might state that it has been agreed between the parties that so far as the large lower Beech-Nut cigarette sign shown in the window, is concerned, the words: "P. Lorillard Co." actually appear thereon as shown in the Simonds' photograph. You had your store windows decorated with advertising matter and the like at one time as shown in these photographs, did you not?

A. Yes, I did.

Q. 3. And at about the time these pictures were taken?

A. Yes, at the time they were taken.

3643

Q. 4. I notice that one section of the window contained advertising matter of tobacco products, including the Beech-Nut cigarettes, and the other side contained certain advertising matter, including Beech-Nut chewing gum?

A. Yes.

Q. 5. Will you please relate, in your own words, as to how it happened that the window was so decorated with the gum and the tobacco display was in the other one next to it?

A. Yes. The tobacco salesman came along and noticed we had a small display in that little corner window there at the east end, Panel No. 4, and he asked me for the privilege of using it for displaying tobaccos and cigarettes made by the P. Lorillard Co. I told him he could have that privilege. About every week or every two weeks he came along and put in a display. Sometimes it was "Between The Acts" and sometimes it happened to be "Flexo Giants" and sometimes it happened to be "Beech-Nuts" so he would make his window display, and we, absolutely unconscious of what he had in that window, had a display of Beech-Nut gum in the window. The Beech-Nut gum originally was on the extreme west side or western panel of the show window, or No. 1.

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3645

Q. 6. That is the one where the gum was first, Panel No. 1?

A. That is where the gum was first, in Panel No. 1.

Q. 7. Go ahead.

A. Friday is window day and the young man asked me what to put in the windows. Being busy on prescription work and other store work at the time, I told him to change things around and put the Beech-Nut gum display on the other end of the large window or Panel No. 3, and change whatever was on Panel No. 3 to Panel No. 1, leaving the center display the same.

3646 Q. 8. What young man was this you speak of?

A. This young man we saw this afternoon.

Q. 9. He was working for you at the time?

A. Yes.

Q. 10. Now, when instructing him to make this change, did you have in mind any connection between the Beech-Nut gum and the Beech-Nut tobacco sign?

A. Absolutely none.

Q. 11. Did you yourself ever form in your mind any connection between the Beech-Nut gum and tobacco products as being made by the same people?

A. Not I myself, no.

3647 Q. 12. Did you ever have any comments, inquiries, or questions asked you by others, such as customers, which would lead you to believe they were made by the same people?

A. Never.

Q. 13. Or that they might have been told they were made by the same people?

A. No.

Q. 14. You have sold both the Beech-Nut gum and the Beech-Nut cigarettes, have you not?

A. Yes.

3648 Q. 15. You have never known any cases where the parties confused the two products?

A. No.

Q. 16. Did the Lorillard man, who decorated your window first with the tobacco signs, have any part, by suggestion or otherwise, in that change of arrangements so that the Beech-Nut advertisement was put next to the Lorillard advertisement?

A. He had absolutely nothing to do with it.

Mr. Cavanagh: That is all.

(Direct Examination Closed.)

Cross Examination.

3649

By Mr. Bulkley:

X-Q. 1. Had you ever learned anything about the use of the word "Beech-Nut" in connection with products sold by the Beech-Nut Packing Company before you had the products in the window, the Lorillard Company products?

A. That is, so that I would be confused or think that one concern made the other?

X-Q. 2. Not at all. Simply as you have learned of the use of the word "Beech-Nut" by the Beech-Nut Packing Company, to designate the products sold by the Beech-Nut Packing Company?

3650

A. I have been familiar, of course, with the Beech-Nut gum long before the Beech-Nut cigarettes—long before I happened to sell the Beech-Nut cigarettes or the Beech-Nut tobacco in the scrap state, and it was always a marvel to us how the Beech-Nut chewing gum came ahead so fast, so that in that way I was familiar with the two concerns and knew they were entirely different.

Mr. Bulkley: That is all.

Cross Examination (Cont'd).

3651

By Mr. Johnson:

X-Q. 3. Mr. Coughlan, I show you again this photograph, Plaintiff's Exhibit No. 2, and this other photograph, Defendant's Exhibit No. 11. Are these two photographs of parts of your window with the display therein the latter part of August, 1921?

A. Those are displays that were in the window, but just what part of the month I couldn't say.

3652 X-Q. 4. This photograph, Plaintiff's Exhibit No. 2, does this photograph cover the window displays in the panels which you have described as Panels Nos. 3 and 4 of your window, the latter week of August, 1921?

A. That does.

X-Q. 5. And does this photograph, which is Defendant's Exhibit No. 11, cover your window display in Panel No. 4, taken a few days later, than the first photograph?

A. That is the display in the window. I couldn't tell how long after this picture here this one was taken. It may be two, three or four days, it may be a week.

3653 X-Q. 6. The subject matter of the photograph, which is Defendant's Exhibit No. 11, is the panel No. 4, which is also in Plaintiff's Exhibit No. 2, is it?

A. Yes, the same display with the exception of the printing being off there and on there, which was called to my attention at the time this picture or this photograph was taken.

Mr. Cavanagh: The witness refers to the fact that the printing of the words: "P. Lorillard Co." is not on the package of Beech-Nut cigarettes in the lower Beech-Nut advertisement in the panel of plaintiff's exhibit, while it does appear upon the defendant's exhibit.

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X-Q. 7. Was the display, shown in Panel No. 4 in these two photographs, in position in your window at the time you had your clerk, as you have described, put the contents of Panel No. 1 in to Panel No. 3?

A. It was.

X-Q. 8. Have you a busy corner drug store, Mr. Coughlan?

A. Busy as far as customers are concerned or as far as automobiles?

X-Q. 9. Yes?

A. Why, most druggists, in referring to the corner, 3655
refer to it as a busy corner.

X-Q. 10. About how many customers a day do you
have in here?

A. Between five and six hundred.

X-Q. 11. Is your front window, which we have been
referring to, on one of the main thoroughfares of South-
ern Connecticut?

A. It is. It is on one of the main roads leading from
New Haven to New York.

X-Q. 12. Are you kept pretty busy waiting on cus-
tomers in your store?

A. Yes.

3656

X-Q. 13. Do you have much time to talk with your
customers?

A. No.

X-Q. 14. Or listen to what they are saying?

A. No.

X-Q. 15. Does a customer often ask you who makes
the cigarette or tobacco he is buying?

A. Very seldom.

X-Q. 16. Have you heard any comments or inquiries
from your customers or others as to whether the Beech-
Nut Scrap Tobacco or Beech-Nut cigarettes were made
by the Beech-Nut gum people?

3657

A. No.

X-Q. 17. When you say that, you mean you don't
remember any such comments or remarks?

A. I mean just that. I can never recollect anybody
being confused as to the same concern making both ar-
ticles.

Mr. Johnson: That is all.

3658

Re-direct Examination.

By Mr. Cavanagh:

R-D. Q. 1. If you had heard any such questions, you would have remembered them, wouldn't you?

A. Positively. The people seem to be very familiar with the Beech-Nut gum and the Beech-Nut Packing Company and I think in my experience it has been on the market so long that when they would say Beech-Nut tobacco we know it is made by a different concern.

3659

Mr. Cavanagh: That is all.

(Cross Examination closed.)

(Deposition closed.)

(Signature of witness waived.)

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if R. F. STAHL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

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Direct Examination.

My name is R. F. STAHL. I am of legal age and a druggist by trade, and do business at the Marx Pharmacy, 35 Kimberly Avenue, New Haven, Connecticut. In addition to drugs I handle such articles as confections, tobacco, stationery and toilet articles.

I have sold Beech-Nut cigarettes since they came on this market and have always known them to be the product of the P. Lorillard Co. I have sold Beech-Nut chewing gum and Beech-Nut Mints for a number of years

past and know that both of these articles are made by the Beech-Nut Packing Company. 366

No Lorillard salesman ever made any remarks to me which indicated any connection between the makers of the Beech-Nut cigarette and the producers of Beech-Nut gum or mints.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut cigarette was manufactured by the same company that manufactures the Beech-Nut gum or Mints.

I regard cigarettes as an entirely distinct line of merchandise from gum or candy, and I have never heard of a confection or food product concern which manufactured any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package. 366

My store is located two blocks from the drug store at 615 Howard Avenue, New Haven, where James J. Cashman, Jr., works.

Cross Examination.

I am a clerk at the Marx Pharmacy and wait on customers, not only at the tobacco stand but in all parts of the store. My employer also waits on customers but looks particularly after the putting up of prescriptions. 366

I am kept pretty busy and have not a great deal of time to listen to what people are saying at the tobacco and cigarette stand. I have been handling tobacco products for several years and am familiar with the various brands. I have handled various brands of the Lorillard tobaccos and cigarettes and know the Lorillard salesmen who come into our store to take orders.

664 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I don't remember any.

Re-direct Examination.

665 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if MISS AGNES R. McKAY were called as a witness on behalf of P. Lorillard Co., defendant, she would testify as follows:

666 *Direct Examination.*

My name is AGNES R. McKAY. I am of legal age and am the manager of the Strand Smoke Shop, located at 239 Elm Street, New Haven. This shop is a small one, measuring about 25 feet by 12 feet. We sell tobacco and confections here and as the store is located among the buildings of Yale University, our customers are principally students. During the school session we have approximately 1,000 customers a day but during the summer months our trade is not nearly so heavy.

I have sold Beech-Nut Scrap tobacco and Beech-Nut

cigarettes here for the past two years, and I have known all that time that they were both products of the Lorillard Tobacco Co. We also handle Beech-Nut chewing gum and Beech-Nut Mints. I know these products to be made by the Beech-Nut Packing Company. 3667

I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought that Beech-Nut Scrap Tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company, and I have never seen a package put up by the Beech Nut Packing Company that looked like either a scrap tobacco or a cigarette package. 3668

I regard tobacco and cigarettes as a distinct line of merchandise from chewing gum and confections and I have never heard of a food product company that manufactured any tobacco products.

Cross Examination.

My "Smoke Shop" has a high class trade. I do a big business with Yale students during the college year. I frequently have a store full of students, who do a great deal of talking and joking but I am usually so busy here waiting on them that I can't try to listen to much of what they say. I have been running the store myself since my father's death several years ago. 3669

I have always handled various of the Lorillard products, especially their cigarettes. I have to keep myself informed as to the different brands, and especially the new brands because I cater to a fastidious trade.

I know the Lorillard salesmen who come frequently into my store to take orders. I have seldom heard one of my customers ask who makes the cigarette or tobacco he is buying.

While I have kept the Beech-Nut Scrap Tobacco and Beech-Nut cigarettes, I haven't a great deal of call at

3670 this shop for the scrap tobacco and the Beech-Nut cigarette has not been a big seller as compared to some of the other cheaper brands.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

3671 *Re-direct Examination.*

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if A. WOLINSKY were called as a witness on behalf of P. Lorillard Co.,
3672 defendant, he would testify as follows:

Direct Examination.

My name is A. WOLINSKY. I am of legal age and am a grocery by trade, and do business at 1993 Whitney Avenue, Whitneyville, New Haven Connecticut. My store is a fairly large one located in a suburban thinly settled residential neighborhood. I have one clerk to assist me in waiting on my trade.

I sell Beech-Nut Scrap tobacco and Beech-Nut cigarettes, both of which articles I know to be manufactured

by the P. Lorillard Co. The scrap tobacco is a good 3673
seller with me but the cigarette is only a fair seller. I
handle Beech-Nut chewing gum, Beech-Nut Mints and
Beech-Nut Peanut Butter, and I know all of these prod-
ucts are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or com-
ments among my customers or others to the effect, or
which led me to believe that they thought that Beech-
Nut Scrap Tobacco or Beech-Nut cigarettes were the
product of the Beech-Nut Packing Company.

I regard tobacco, and cigarettes as a distinct line of
merchandise from gum or food products, and I have
never heard of a food products company which manu- 3674
factured any tobacco products, and have never seen a
package put out by the Beech-Nut Packing Company
which looked like either a scrap tobacco or a cigarette
package.

My store is located on the same street west and
about a quarter of a mile away from the drug store at
1235 Whitney Avenue, where Nathan Hammerman
works.

I sell Polo Ketchup and Polo cigarettes, Murad
Canned corn and Murad cigarettes, Comet Tobacco and
Comet Rice. None of these products are manufactured
by the same concern. 3675

IT IS STIPULATED that objection is made by plaintiff's
counsel to the witness's testimony in regard to different
goods sold under similar names and the makers of same,
on the ground that the same is incompetent, irrelevant
and immaterial.

Cross Examination.

I have handled tobacco for many years and am
familiar with the different brands. I have handled
many of the Lorillard products and know the Lorillard

6 salesmen who come into my store frequently to take my orders. My customers hardly ever ask who makes the cigarettes or tobacco they are buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

7 *Re-direct Examination.*

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

8 IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if SAM SUKLOFF, JR., were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is SAM SUKLOFF, JR., I am of legal age and a retail merchant by trade. I do business at 1012 Chapel Street, New Haven, Connecticut. I sell tobacco products and novelties in my store, and during the school session at Yale University, I serve about a thousand customers a day, many of them students. There are always two clerks on duty here and sometimes three, including myself.

I have sold Beech-Nut Scrap tobacco since 1915 and Beech-Nut cigarettes since they appeared on this market, something like two years ago. I have always known that both of these products were manufactured by the P. Lorillard Co. I also handle Beech-Nut chewing gum and Beech-Nut Mints, and I know these articles to be the products of the Beech-Nut Packing Company. 3679

Although no one ever asked me whether Beech-Nut Scrap Tobacco was manufactured by the same company that makes Beech-Nut chewing gum, I do remember that when the cigarette was first put on the market a few of my customers did ask me whether there was any connection between the makers of the gum and the makers of the cigarettes. These instances occurred shortly after I began selling the cigarettes, and since then I have heard no remarks, comments or inquiries among my customers or others to the effect, or which led me to believe that they thought the Beech-Nut cigarette to be manufactured by the same company that makes the Beech-Nut chewing gum. I told those persons who asked me those questions that the cigarettes were made by the P. Lorillard Co., while the gum was manufactured by the Beech-Nut Packing Company. 3680

I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum or confections, and I have never heard of a confection or food products company which made any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package. 3681

While I do not have a great demand for scrap tobacco, the Beech-Nut scrap is my best selling scrap tobacco. Although the Beech-Nut cigarette is a slow seller as compared to such leaders as Camels or Lucky Strikes, I have, in the aggregate, sold a great many packages of this brand.

Cross Examination.

I am the proprietor of the University Smoke Shop at 1012 Chapel Street, New Haven, and cater largely to Yale students. During the college year my place of business is often crowded with students. There is usually considerable conversation and banter going on, and I am too busy waiting on them to be able to listen to much of what is being said.

On account of my particular trade I make it a point to keep myself well informed as to the various brands of tobacco and cigarettes. I have handled many of the Lorillard Co. products and have sold large quantities of them. I know the Lorillard salesmen who come into my store frequently to take orders. The customer almost never asks who makes the cigarette or tobacco he is buying.

I have made no effort to remember any remarks, inquiries or comments as to whether the Beech-Nut Scrap Tobacco and Beech-Nut cigarettes were made by the same people who make the Beech-Nut chewing gum, and other Beech-Nut Packing Company products, and when I say that I have heard only a few such inquiries or comments in regard to the Beech-Nut cigarettes I mean that is all I remember.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory, but I am sure I have not heard any such remarks except shortly after the appearance of the cigarette on this market.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if C. C. GILLESPIE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is C. C. GILLESPIE, I am of legal age, a storekeeper by trade, and do business under the name of T. P. Gillespie & Company at 744 Chapel Street, New Haven, Connecticut. In addition to drugs we sell here such articles as toilet articles, fountain pens, stationery, tobacco and confections.

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I have sold Beech-Nut Scrap tobacco for a number of years past and Beech-Nut cigarettes since they appeared on this market, and have always known that both of these products were manufactured by the P. Lorillard Co.; and I have long known that the Lorillard Co. is one of the oldest and largest tobacco concerns. I also sell Beech-Nut chewing gum and Beech-Nut Mints, and I know that these are made by the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct line of merchandises from the gum or candy, and I have never heard of a gum, confection or food products concern which manufactured any tobacco products, and have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

3687

I sell Apple chewing gum and Apple tobacco, made by different companies; Mavis talcum powder and Mavis candy, made by different companies; Gem nail clippers and Gem razor blades, made by different companies; Ideal bandages, Ideal brushes and Ideal foun-

3688 tain pens, all made by different companies; Ever Ready razor blades and Ever Ready search lights, made by different companies; Velvet pencils and Velvet tobacco made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that same is incompetent, irrelevant and immaterial.

Cross Examination.

3689 We have one of the busiest downtown drug stores in New Haven. I wait on customers in all parts of the store myself and am kept so busy as a rule that I have very little time to listen to what customers are saying about tobacco and cigarettes.

I have handled tobacco products for a great many years and am familiar with the various brands. I have sold large quantities of the P. Lorillard Co. tobacco products and know the Lorillard salesmen who are frequently in my store taking orders. I do not remember a customer ever asking me who made the particular tobacco or cigarette he was buying.

3690 I have made no particular effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any.

Re-direct Examination.

3691

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties, through their respective counsel, that if ISADORE TAGUM were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

3692

Direct Examination.

My name is ISADORE TAGUM. I am of legal age, a retail merchant by trade, and do business at 609 Howard Ave., New Haven, Connecticut. My store is located next door to Biernes Drug Store, 615 Howard Avenue, where James J. Cashman works.

I sell groceries, candies, soda water and tobacco, and we have about two hundred customers a day. I have handled Beech-Nut Scrap tobacco for the past five years, and Beech-Nut cigarettes for about two years, and I know that both of these products are made by the P. Lorillard Co.

3693

I also sell Beech-Nut chewing gum and Beech-Nut mints, which I know to be manufactured by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3694 I have never seen a package put out by the Beech-Nut Packing Company which looked either like a scrap tobacco or cigarette package, nor have I ever heard of a confection or food products concern that were manufacturing any tobacco products.

I regard tobacco and cigarettes as a distinct line of merchandise from gum or confection.

I sell Harvard ginger ale and Harvard cigars; Velvet pencils and Velvet tobacco, all made by different companies.

3695 IT IS STIPULATED that objection is made by plaintiff's counsel to the witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

Cross Examination.

3696 I have been handling tobacco for some years and am familiar with the different brands. I have handled various of the P. Lorillard Co. products and know their salesmen who come into my store at frequent intervals to take orders. I have one assistant in my store and wait on customers in all parts of the store myself. I haven't a great deal of time or opportunity to listen to what customers are saying. A customer hardly ever asks me who makes the tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I have no reason to do so. When I say

that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any. 3697

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed upon my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if HARRY SILVERMAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows: 3698

Direct Examination.

My name is HARRY SILVERMAN. I am of legal age, a retail tobacco merchant by trade, and do business under the name of "Harry's Smoke Shop," located at 94 Church Street, New Haven, Connecticut. In addition to tobacco we carry a small line of chewing gum and confections.

I have sold Beech-Nut scrap tobacco for a number of years past, and Beech-Nut cigarettes for the past two years, and have always known that both of these products were manufactured by the P. Lorillard Co. I also handle Beech-Nut chewing gum and Beech-Nut Mints, which I know to be made by the Beech-Nut Packing Company. 3699

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut

3700 scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as a distinct line of merchandise from candy or gum, and have never heard of a chewing gum or confection concern which made any tobacco product. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

I have dealt a great deal with the P. Lorillard Co. and sold many of their brands, and I know that company to be one of the largest and oldest of the tobacco concerns.

3701 I sell Velvet pencils and Velvet tobacco, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that same is incompetent, irrelevant and immaterial.

Cross Examination.

3702 I have a busy down-town tobacco store. There are usually two of us waiting on customers and sometimes more. I am kept pretty busy myself and haven't much time or opportunity to talk to customers or listen to what they are saying. I can not remember a customer ever asking me who makes the tobacco or cigarette he is buying. I have, for many years, known the P. Lorillard Co. products and know their salesmen.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Com-

pany products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any. 3703

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

3704

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if MRS. N. FRANTZ were called as a witness on behalf of P. Lorillard Co., defendant, she would testify as follows:

Direct Examination.

My name is Mrs. N. FRANTZ. I am of legal age, and am a storekeeper doing business at 92 Fourth Ave., West Haven, Connecticut. My husband is the proprietor of this business, but he has other employment and I run the store for him. 3705

This is a general store where we sell groceries, tobacco, toilet articles, stationery, and so forth. My store is located about two blocks from the grocery store at 735 Washington Avenue, which is run by Robert G. Greene.

I have sold Beech-Nut scrap tobacco for several years past, and Beech-Nut cigarettes for the past two years, and have always known that both of these products are made by the P. Lorillard Co. I also sold Beech-Nut chewing gum, Beech-Nut Mints, and have, at times, handled some of the Beech-Nut food products such as Peanut Butter and Tomato Ketchup, and I

706 know these products are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as a distinct line of merchandise from confections and food products, and I have never heard of a food products company that manufactured any tobacco. I have never seen a package put out by the Beech-Nut Packing Company which
707 looked like either a scrap tobacco or a cigarette package.

Cross Examination.

I wait on customers in all parts of my store, and don't pay much attention to what they are saying about the tobacco and cigarettes. I have handled P. Lorillard Co. products for some years, and know the Lorillard salesmen when they come into my store to take orders.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to
708 whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

3709

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if MEYER LEVINE were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is MEYER LEVINE. I am of legal age, a general storekeeper by occupation and doing business at 393 Campbell Avenue, West Haven, Connecticut. My store is located two blocks from the store at 630 Campbell Avenue where Edward J. Glynn works.

3710

I sell a varied line of merchandise, including stationery, tobacco, confections, playing cards, toilet articles, and so forth. I have handled Beech-Nut Scrap tobacco for the past five years and Beech-Nut cigarettes for the past two years, and I have always known these products to be manufactured by the Lorillard Tobacco Co.

I have handled a great many Lorillard products and know the Lorillard Co. to be one of the oldest and largest of the tobacco concerns. I sell Beech-Nut chewing gum and Beech-Nut Mints, and I know both of these products to be made by the Beech-Nut Packing Company.

3711

I have never heard any inquiries, comments or remarks among my customers or others which led me to believe that they thought the Beech-Nut Scrap tobacco to be manufactured by the same company which makes the Beech-Nut chewing gum and Beech-Nut Mints; but when the cigarette first came on this market several of my customers would ask me whether the new cigarette was made by the same company that made the Beech-Nut gum. I told them that such was not the case and I explained to them who was the maker of each product.

3712 Since shortly after the cigarette was introduced into this market I have heard no such comments or remarks among my customers or elsewhere.

I regard tobacco and cigarettes as a distinct line of merchandise from chewing gum or confections, and have never heard of a food products concern which manufactured any tobacco, nor have I ever seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

Cross Examination.

3713 I have sold large quantities of P. Lorillard Co. tobacco products and know the Lorillard salesmen who come into my store frequently to take orders. I have never paid a great deal of attention to what people in my store were saying about tobacco and cigarettes. I do not remember of any customer ever asking me who made the particular cigarette or tobacco he was purchasing.

I have made no effort to remember any comments, inquiries, or remarks as to whether the Beech-Nut Scrap tobacco or Beech-Nut cigarettes were made by the same people who make the Beech-Nut gum and other Beech-Nut Packing Company products, and when I say that I have heard several make such remarks or comments as to the Beech-Nut cigarettes, I mean I do not remember any more than that.

Re-direct Examination.

I can only say that I do not remember having heard more than several such comments or remarks. I can further state that if I had heard a substantially greater number of them, it would have been impressed on my memory.

3715

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if JOHN K. STEVENSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is JOHN K. STEVENSON. I am of legal age, a druggist by trade and my store is located near the store at 630 Campbell Avenue, where Edward J. Glynn works.

3716

In addition to drugs I carry in my store a varied line of products, including confection, tobacco products, toilet articles, stationery, periodicals, and so forth. I have sold Beech-Nut scrap tobacco for the past five years and Beech-Nut cigarettes since they first appeared on this market about two years ago. I know both of these products to be manufactured by the P. Lorillard Co. I handle Beech-Nut chewing gum and Beech-Nut mints, and I know that these are products of the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3717

I do not regard tobacco or cigarettes as in any way related to chewing gum or mints, and I have never heard of a gum or confections concern which manufactured any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

3718 I have been handling tobacco products in my store for a good many years and have known of the P. Lorillard Co. all that time, and know it to be one of the largest and oldest of the tobacco companies.

Cross Examination.

I have handled large quantities of P. Lorillard Co. tobacco products and know their salesmen, who come into my store. A customer hardly ever asks the name of the maker of the tobacco or cigarette he is buying.

3719 I am kept pretty busy waiting on customers and haven't much time or opportunity to talk to them or listen to what they are saying.

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember.

Re-direct Examination.

3720 If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

3721

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if the men whose names and addresses here appear, to wit:

WILLIAM SILVER, Druggist, 519 Campbell Ave.,
West Haven, Conn.,

TRACE CALDWELL, Druggist, Union Ave. & Main
Street, West Haven, Conn.,

were called as witnesses on behalf of P. Lorillard Co.,
defendant, they would each testify as follows:

3722

Direct Examination.

I am of legal age, druggist by trade, and run a store where, in addition to drugs, such articles as toilet articles, stationery, periodicals, confections and tobacco are sold. I have handled Beech-Nut scrap tobacco for five or six years and the Beech-Nut cigarettes since they appeared on this market two years ago.

I have always known that both of these products were manufactured by the P. Lorillard Co. The Lorillard salesmen who come into my store are either already acquainted with me or tell me when they introduce themselves what company they represent.

3723

I sell Beech-Nut chewing gum and Beech-Nut Mints, and I know that these products are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3724 I have never heard of a gum, candy or food products concern which engaged in the tobacco business, and I regard tobacco and cigarettes as an entirely distinct line of merchandise from confections or food products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

Cross Examination.

3725 I have sold large quantities of P. Lorillard Co. tobacco products, and know their salesmen from time to time. I wait on customers in the various parts of my drug store, and am usually too busy to listen to their conversation. I haven't had much time or opportunity to hear what they were saying about tobacco or cigarettes. I do not remember a customer ever asking who made the cigarettes or tobacco he was buying.

3726 I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

New Haven, Conn.,
August 7, 1923.

Met pursuant to adjournment.
Parties present as before.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if L. WOLFSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is L. WOLFSON. I am of legal age, a retail merchant by trade, and do business at 29 River Street, Milford, Connecticut. My store is located less than a block from the store at No. 3 Center Street where C. A. Sattig works. My store is a small but very busy one. I have one clerk here to assist me and we have about seven hundred customers a day.

I sell tobacco, confections, stationery and periodicals. I have sold Beech-Nut Scrap Tobacco for the past five years and Beech-Nut cigarettes for the past two years, and have always known that both of these products were made by the P. Lorillard Co.

I sell Beech-Nut chewing gum and Beech-Nut candies, and I know these products are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap Tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3730

I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum or confections. I have never heard of a candy or food products concern which manufactured any tobacco products.

I sell Velvet Pencils and Velvet tobacco, manufactured by different companies.

3731

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

Cross Examination.

I have a busy store and am too busy most of the time to talk to customers. I haven't had much opportunity to hear what customers were saying around my tobacco and cigarette stand.

3732

I have been handling P. Lorillard Co. tobacco products for many years, and know the Lorillard salesmen who come into my store at frequent intervals to take orders. I do not remember a customer ever asking me who makes the tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I don't remember any.

Re-direct Examination.

3733

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if JOSEPHINE GARBARINO were called as a witness on behalf of P. Lorillard Co., defendant, she would testify as follows:

3734

Direct Examination.

My name is JOSEPHINE GARBARINO. I am of legal age and I am the proprietor and manager of the Milford Fruit Company, which is a grocery store located at Nos. 1 and 2 Daniels Street, Milford, Connecticut. In addition to groceries we handle tobacco products. We serve about two hundred customers a day.

My store is located one block from the grocery store run by Mary W. Gregory and is two blocks from the store at No. 3 Center Street, where C. A. Sattig works.

3735

I have sold Beech-Nut Scrap tobacco for several years past and Beech-Nut cigarettes for the last two years and have always known that both of these products were made by the P. Lorillard Co. I sell Beech-Nut Peanut Butter, Beech-Nut chewing gum and Beech-Nut Mints. I know all of these products are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or

736 which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard food products and confections as in no way related to tobacco products and I have never heard of a food products concern which put out any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package.

Cross Examination.

737 I run all the departments of my store and also wait on customers. I haven't much time to talk to customers at the tobacco and cigarette stand, and haven't much opportunity to listen to what they are saying.

I have handled various of the P. Lorillard Co's tobacco products and know the Lorillard salesmen. A customer hardly ever asks who makes the cigarette or tobacco he is buying.

738 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if RESTIVO were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is RESTIVO. I am of legal age, a retail merchant, and do business at No. 13 River Street, Milford, Connecticut. I sell soda water, candy, tobacco and fruit. I have handled Beech-Nut Scrap tobacco and Beech-Nut cigarettes for several years, and I know both of these products to be manufactured by the P. Lorillard Co. I also sell Beech-Nut chewing gum and Beech-Nut Mints, and I know these products to be made by the Beech-Nut Packing Company.

3740

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I know most of the tobacco salesmen who call on me, and when the Lorillard salesmen come here, if I do not already know them, they introduce themselves to me as representatives of the P. Lorillard Co. None of them ever made any remarks which indicated to me that there was any connection between the makers of the Beech-Nut tobacco products and the makers of the Beech-Nut gum and Mints.

3741

I regard tobacco and cigarettes as a distinct line of merchandise from food products or confections; I have never heard of a food products concern which manufactured any tobacco products and have never seen a package put out by the Beech-Nut Packing Com-

3742 pany which looked like either a serap tobacco or a cigarette package.

I sell Chesterfield pipes and Chesterfield cigarettes, made by different companies; Diamond Grape Fruit and Diamond Ginger Ale and Diamond Walnuts; all put up by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

3743

Cross Examination.

I have a small shop but am kept pretty busy looking after and waiting on customers who are looking at the various things that we carry. I have handled P. Lorillard tobacco products for many years, and know the Lorillard salesmen who come into my store. I never knew a customer to ask me who made the tobacco or cigarette he was buying.

3744

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if WILLIAM DOLL were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is WILLIAM DOLL. I am of legal age, and the manager of a confectionery store, located on the central square of the town of Milford, Connecticut. My store is a pretty large one. We do a good business and i am assisted by one clerk.

3746

In addition to confections we handle tobacco products, including Beech-Nut Scrap tobacco and Beech-Nut cigarettes. I have always known that this Beech-Nut tobacco and these Beech-Nut cigarettes were made by the P. Lorillard Co. I handle Beech-Nut chewing gum and a number of the Beech-Nut candies, and I know that all of these are made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3747

I regard confections as a distinct line of produce from tobacco and cigarettes; have never heard of a confections concern which made any tobacco products, and have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or cigarette package.

3748

Cross Examination.

I have been handling tobacco for some years and am familiar with the different brands. I have sold large quantities of P. Lorillard Co. tobacco products, and know the Lorillard salesmen who come into my store to take orders.

I have a busy store in the center of Milford and frequently have crowds in our store. I am busy waiting on customers in the different parts of it and have not much time or opportunity to talk with them or hear what they are saying around the tobacco section.

3749

I can not remember of a customer ever asking who makes the tobacco or cigarette he is buying. I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

3750

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if W. J. COSTELLO were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is W. J. COSTELLO, I am of legal age and a retail merchant, now doing business at Morningside, Connecticut. I have been located here in Morningside only about two months, and for several years before I came here, I did business at No. 40 East Broadway, Milford, Connecticut. My store there was located about fifty yards from the grocery store at No. 11 Cherry Street where Alexander C. Gardner works.

3752

I have sold Beech-Nut Scrap tobacco for the past five or six years and Beech-Nut cigarettes since they appeared on this market about two years ago, and I have always known that these articles were manufactured by the P. Lorillard Co.

I also have handled Beech-Nut chewing gum and Beech-Nut Mints for a number of years past, and have always known that these articles were manufactured by the Beech-Nut Packing Company.

3753

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I have never heard of a food products, confections or gum concern which manufactured any tobacco products nor have I ever seen a package put out by the Beech-

3754 Nut Packing Company which looks like either a scrap tobacco or a cigarette package.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum, candies or food products.

Cross Examination.

I have been handling tobacco for many years and am pretty familiar with the different brands. I have sold considerable quantities of P. Lorillard Co. products and know the Lorillard salesmen who have been coming into my various stores from time to time to take orders.

3755 I did a pretty good business in my store in Milford and have continued the same here at Morningside. I am kept pretty busy as a rule, looking after my store, and haven't a great deal of time to talk to customers or listen to what they are saying about tobacco or cigarettes. I cannot remember a customer ever asking me who makes the cigarettes or tobacco he is buying.

3756 I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if A. B. WELSH were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. B. WELSH, I am of legal age, and am the manager of a company known as Davey Bros., which is a chain grocery store company with headquarters on Water Street, Bridgeport, Connecticut.

3758

The Davey Bros. Company operate sixty-four grocery stores in the State of Connecticut, thirty of these being located in Bridgeport.

I am not engaged in waiting on customers at all but I visit these stores a great deal as in a supervisory capacity and am familiar with conditions in them.

We have sold Beech-Nut Scrap Tobacco in all our stores for the past five or six years, and have been handling Beech-Nut cigarettes since they appeared on this market. I have always known that both of these products were made by the P. Lorillard Co. We also handle Beech-Nut chewing gum, Beech-Nut Mints, and from time to time some of the Beech-Nut food products such as Peanut Butter or canned products. I know all of these articles to be made by the Beech-Nut Packing Company.

3759

I have never heard any remarks, inquiries or comments among my clerks, customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were manufactured by the same company which makes the Beech-Nut chewing gum or Beech-Nut food products.

3760 I regard tobacco and cigarettes as a distinct line of merchandise from food products, gum or candies, and I have never heard or known of a confections or food products company which made any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company, which looked like either a scrap tobacco or a cigarette package.

We handle Star Hams and Star bacon, made by one company, and Star tobacco made by a different company.

3761 IT IS STIPULATED that objection is made by plaintiff's counsel to the witness' testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

Cross Examination.

3762 I have been managing this chain of stores for a number of years now; since before we first put in Beech-Nut Scrap tobacco and Beech-Nut cigarettes. I do the buying. When I first placed the Beech-Nut Scrap tobacco and Beech-Nut cigarettes in our stock I knew they were products of the P. Lorillard Co.

I have been handling tobacco among other things, for a good many years and am familiar with the different brands. I have sold large quantities of P. Lorillard Co. products and have, for a long time, known the Lorillard salesmen who take my orders.

As I do not wait on customers myself I am not often in any one store continuously, and when I am on the floor of any one store I am usually too busy to listen to what customers are saying unless it is in regard to complaints or such matters.

I have never had much opportunity to talk to customers at our various tobacco sections or to listen to what they were saying. 3763

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any.

Re-direct Examination.

3764

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPUATED by and between the parties hereto, through their respective counsel, that if the men whose names and addresses here appear, to wit:

3765

WILLIAM F. SMITH, Variety Store, 246 State St.,
Bridgeport, Conn.,

ERNEST RANKIN, Retail Tobacco Store, 1184 Boston
Ave., Bridgeport, Conn.,

NATHANIEL OHM, Variety Store, 897 East Main St.,
Bridgeport, Conn.,

E. MERKIN, Variety Store, 633 East Main St., Bridge-
port, Conn.,

WILLIAM SILVERMAN, Tobacco and Novelty Store,
4 Fairfield Ave., Bridgeport, Conn.,

9766 JOHN H. ECKLER, JR., Retail Tobacco, Candy Counter and Pool Parlor, 874 Main St., Bridgeport, Conn.,

HENRY SCHWARTZ, Retail Tobacconist, 205 Stratford Ave., Bridgeport, Conn.

were called as witnesses on behalf of P. Lorillard Co., defendant, they would each testify as follows:

Direct Examination.

1767 I am of legal age. I have sold a number of the products of the P. Lorillard Co. for a number of years past, among them Beech-Nut Scrap tobacco and Beech-Nut cigarettes. I have always known that these two articles were manufactured by that company. I have handled for a number of years past Beech-Nut chewing gum and Beech-Nut Mints, and have always known that these products were made by the Beech-Nut Packing Company.

As a rule I am already acquainted with the Lorillard salesmen who call on me at frequent intervals, but when one of them calls, who is not already known to me, he introduces himself as a representative of the P. Lorillard Co.

768 None of these tobacco salesmen ever made any remarks to me which indicated that there was any connection between the Beech-Nut Scrap tobacco and the Beech-Nut cigarettes and the makers of the Beech-Nut chewing gum or Beech-Nut mints.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from chewing gum or confections, and I have never heard of a chewing gum, confections or

food products company which manufactured any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package. 3769

IT IS STIPULATED by the parties, through their respective counsel, that JOHN H. ECKLER, JR., named in this stipulation, would say that in addition he sells Star razor blades and Star tobacco, made by different companies; Chesterfield pipes and Chesterfield cigarettes, made by different companies; Uncle Sam playing cards and Uncle Sam Tobacco, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial. 3770

Cross Examination.

I have handled tobacco for some years and am familiar with the different brands. I have sold a considerable quantity of P. Lorillard Co. products and knew that the Beech-Nut Scrap tobacco and Beech-Nut cigarettes were products of that company, before I first put them in to stock. 3771

A customer hardly ever asks me who makes the tobacco or cigarette he is buying.

I am kept pretty busy looking after my store and waiting on customers and haven't much time to talk to customers or listen to what they are saying around the tobacco and cigarette counter.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or

1772 not they are made by the same company that makes the Beech-Nut gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any.

Re-direct Examination.

If I had heard any such inquiries, comments, or remarks in any appreciable numbers, or frequently, I think I would have remembered same, for such would have been impressed on my memory.

1773

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if A. H. GOTCH were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

1774

My name is A. H. GOTCH, I am of legal age and am a retail tobacconist by trade and do business at 428 Barnum Avenue, Bridgeport, Connecticut. I sell about four hundred customers a day and in addition to tobacco, I handle candy, stationery and periodicals.

I have sold Beech-Nut Scrap tobacco for the past five years, have always known this to be a product of the P. Lorillard Co. and have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that this Beech-Nut Scrap tobacco was a product of the Beech-Nut Packing Company, the makers of Beech-Nut chewing gum and Beech-Nut Mints, which articles I handle here in this store.

I have sold Beech-Nut cigarettes since they appeared on this market two years ago, and when they first appeared I heard possibly as many as three or four customers inquire whether the Beech-Nut cigarette was made by the same company that manufactured the Beech-Nut gum. 3775

I knew that this was not the case and told these inquirers that the Beech-Nut cigarette was made by the P. Lorillard Co. whereas the Beech-Nut gum was made by the Beech-Nut Packing Company, and that there was no connection between the two concerns.

Except for these three or four inquiries when the cigarette first came out I have never heard any remarks, inquiries or comments among my customers or others to the effect or which led me to believe that they thought the Beech-Nut cigarette was made by the same company which manufactured the Beech-Nut chewing gum. 3776

I have handled Lorillard products for a great many years and I know the Lorillard Co. to be one of the oldest and largest of the tobacco concerns.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from gum, confections or food products, and I have never known of a gum, confections or food products concern which manufactured any tobacco products. I have never seen a package put out by the Beech-Nut Packing Company which looked like either a scrap tobacco or a cigarette package. 3777

I sell Blue Ribbon matches and Blue Ribbon Playing Cards, made by different companies; Star tobacco and Star shaving brushes, made by different companies; Chesterfield Pipes and Chesterfield cigarettes, made by different companies.

IT IS STIPULATED that objection is made by plaintiff's counsel to the witness's testimony in regard to different

3778 goods sold under similar names and the makers of same, on the ground that the same is incompetent, irrelevant and immaterial.

Cross Examination.

I have handled tobacco for a good many years and am familiar with the different brands. I have sold large quantities of P. Lorillard Co. products.

3779 I am kept pretty busy in my store and haven't much time or opportunity to talk to customers or listen to what they are saying. I have made no effort to remember any remarks, comments or inquiries as to whether the Beech-Nut Scrap tobacco and Beech-Nut cigarettes were made by the same people that make the Beech-Nut chewing gum and other Beech-Nut Packing Company products. When I say that I have heard three or four such remarks or inquiries, I mean that I do not remember any more than that.

Re-direct Examination.

3780 If I had heard a considerably greater number of such inquiries than the three or four which I have mentioned, I am sure I would have recalled the fact, and I can say positively that I have never heard any such inquiries or remarks since shortly after the appearance of the Beech-Nut cigarette on this market.

3781

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if MRS. H. FINESON were called as a witness on behalf of P. Lorillard Co., defendant, she would testify as follows:

Direct Examination.

My name is MRS. H. FINESON. I am of legal age and am the manager of an up-to-date variety store, located at No. 5 Main Street, Norwalk, Connecticut. I have been in this business for five years past and have sold Beech-Nut Scrap tobacco all that time.

3782

I have always known this to be a product of the Lorillard Co. When the Lorillard salesmen first called on me after I opened this store, they introduced themselves to me as representatives of that company.

I have sold Beech-Nut cigarettes since they appeared on this market about two years ago and have always known that this product was also made by the P. Lorillard Co. I sell Beech-Nut chewing gum and Beech-Nut Mints, made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were made by the Beech-Nut Packing Company.

3783

I regard tobacco and cigarettes as a distinct line of merchandise from confections or food products. I have never heard of a food products company which made any tobacco products, and have never seen a package put out by the Beech-Nut Packing Company which looked like either a cigarette or a scrap tobacco package.

784

Cross Examination.

I have handled tobacco for a long time, and am familiar with the different brands. I have sold considerable quantities of P. Lorillard tobacco products and know the Lorillard salesmen who come into my store to take orders.

785

I keep a good many different kinds of things in my store and am kept pretty busy waiting on customers, who are asking for the different things. I haven't much time or opportunity to talk to the customers or listen to what they are saying about tobacco or cigarettes. A customer hardly ever asks me who makes the particular tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut chewing gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

786

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if JAMES P. SHEEHAN were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is JAMES P. SHEEHAN, I am of legal age, a retail tobacconist, and do business at No. 23 Wall Street, Norwalk, Connecticut. I have been in the retail tobacco business for the past thirty years and all that time have handled some of the products of the P. Lorillard Co. I know of that concern as one of the largest and oldest of the tobacco companies.

3788

I have sold Beech-Nut Scrap tobacco for the past five or six years and Beech-Nut cigarettes for the past two years, and have always known that both of these products were made by the P. Lorillard Co.

I also sell Beech-Nut chewing gum and Beech-Nut Mints made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

3789

I regard tobacco and cigarettes as an entirely distinct and separate line of produce from gum and mints. I have never heard of a gum, confections or food products concern which put out any tobacco products and have never seen a package put out by the Beech-Nut Packing Company which looks like either a Beech-Nut Scrap tobacco or a cigarette package.

3790

Cross Examination.

I have sold large quantities of Lorillard tobacco products during my time in the business, and have, for many years, known the Lorillard salesmen who come into my store to take orders.

I have a busy tobacco store and haven't a great deal of time or opportunity to talk to customers or listen to what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying.

3791

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut chewing gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

Re-direct Examination.

3792

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if A. M. SELIGSON were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is A. M. SELIGSON, I am of legal age and am the manager of the S. & S. Tobacco Company, 36

Wall Street, Norwalk, Connecticut. This company operates a retail store where tobacco, razors, flash lights, chewing gum and candy are sold. I, myself, am in charge of this store and wait on the customers, who number about four hundred a day. 3793

I have handled Beech-Nut Scrap tobacco for the past five years and Beech-Nut cigarettes since they appeared on this market about two years ago. I have always known these products to be made by the P. Lorillard Co. I sell Beech-Nut chewing gum and Beech-Nut Mints, made by the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct line of merchandise from gum and confections, and have never heard of a confections or food products concern which manufactured any tobacco products, and have never seen a package put out by the Beech-Nut Packing Company, which looked like either a scrap tobacco or a cigarette package. 3794

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

Cross Examination.

3795

I have been a long time in the trade and have sold large quantities of P. Lorillard Co. tobacco products. I know the Lorillard salesmen who come into my store to take orders.

I am in a busy store and haven't much time or opportunity to talk to customers or listen to what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying.

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether

3796 or not they are made by the same company that makes the Beech-Nut chewing gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks, I mean that I don't remember any.

Re-direct Examination.

3797 If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

IT IS STIPULATED by and between the parties hereto, through their respective counsel, that if W. A. CLARK were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

3798 My name is W. A. CLARK, I am of legal age, and I have been in the retail tobacco business for the past thirty years and have been located for the past fifteen years at Washington and South Main Streets, South Norwalk, Connecticut.

My store is at the very center of South Norwalk and I have about three hundred customers a day. This store is one block from the store where Mr. Morelli works.

I have sold Beech-Nut Scrap tobacco for the past five or six years and Beech-Nut cigarettes for the past two years, and have always known that both of these products were made by the P. Lorillard Co.

I also sell Beech-Nut chewing gum and Beech-Nut Mints made by the Beech-Nut Packing Company. 3799

I have never heard any remarks, inquiries or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard tobacco, and cigarettes as an entirely distinct and separate line of produce from gum and mints. I have never heard of a gum confections or food products concern which put out any tobacco products and have never seen a package put out by the Beech-Nut Packing Company which looked like either a Beech-Nut Scrap tobacco or a cigarette package. 3800

Cross Examination.

I have sold large quantities of Lorillard tobacco products during my time in the business, and have, for many years, known the Lorillard salesmen who come into my store to take orders.

I have a busy tobacco store and haven't great deal of time or opportunity to talk to customers or listen to what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 3801

I have made no effort to remember any inquiries, comments or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarettes, and as to whether or not they are made by the same company that makes the Beech-Nut chewing gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments or remarks I mean that I don't remember any.

802

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

STIPULATION.

803

IT IS STIPULATED by and between the parties hereto, through their respective counsel that if C. F. TARLOV were called as a witness on behalf of P. Lorillard Co., defendant, he would testify as follows:

Direct Examination.

My name is C. F. TARLOV. I am of legal age and a retail tobacconist, doing business under the name of Tarlov Brothers in a store, located just across the street from that of W. A. Clark, South Norwalk, Connecticut.

My store is located one block from the fruit store at No. 22 Union Street, South Norwalk, where John Morelli works.

804

I have sold Beech-Nut Scrap tobacco for the past five or six years and Beech-Nut cigarettes for the past two years, and have always known that both of these products were made by the P. Lorillard Co.

I also sell Beech-Nut chewing gum and Beech-Nut Mints made by the Beech-Nut Packing Company.

I have never heard any remarks, inquiries, or comments among my customers or others to the effect, or which led me to believe that they thought Beech-Nut Scrap tobacco or Beech-Nut cigarettes were the product of the Beech-Nut Packing Company.

I regard tobacco and cigarettes as an entirely distinct and separate line of produce from gum and mints. I

have never heard of a gum, confections or food products concern which put out any tobacco products and have never seen a package put out by the Beech-Nut Packing Company which looked like either a Beech-Nut Scrap tobacco or a cigarette package. 3805

Cross Examination.

I have sold large quantities of Lorillard tobacco products during my time in the business, and have, for many years, known the Lorillard salesmen who come into my store to take orders.

I have a busy tobacco store and haven't a great deal of time or opportunity to talk to customers or listen to what they are saying. A customer hardly ever asks who makes the tobacco or cigarette he is buying. 3806

I have made no effort to remember any inquiries, comments, or remarks as to who makes the Beech-Nut Scrap tobacco or Beech-Nut cigarette, and as to whether or not they are made by the same company that makes the Beech-Nut chewing gum or other Beech-Nut Packing Company products, and I had no reason to do so. When I say that I have never heard any such inquiries, comments, or remarks, I mean that I don't remember any. 3807

Re-direct Examination.

If I had heard any such inquiries, comments or remarks in any appreciable numbers, or frequently, I think I would have remembered the same, for such would have been impressed on my memory.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,	} In Equity
Plaintiff,	
<i>vs.</i>	
P. Lorillard Co.,	} No. 3056.
Defendant.	

CERTIFICATE.

State of Connecticut }
County of New Haven } ss.:

I HERBERT J. KRAUSE, a Notary Public, within and for the State of Connecticut, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing depositions of William J. Dolan, William H. Norton, John Racow, Philip Gerardi, Benjamin Saletan, Joseph A. Tevlin, Maxwell C. Durham, Barnett Dickestein, Paul Schwartz and William J. Coughlan were taken in behalf of the P. Lorillard Co., defendant, pursuant to agreement and notice before me, at Hartford, New Haven and West Haven, Connecticut, beginning August 6th, 1923; that each of the foregoing witnesses was by me duly sworn; that the testimony of said witnesses was taken down in shorthand by me; and thereafter reduced to typewriting by me; that the plaintiff, the Beech-Nut Packing Company, was represented by Charles C. Bulkley and H. McClure Johnson, and that the defendant, the P. Lorillard Co., was represented by Richard B. Cavanagh and Thomas L. Preston during the taking of said testimony; that the testimony was taken in Hartford, New Haven and West Haven, Connecticut,

beginning at eleven o'clock in the morning of August 6th, 1923, and ending at eleven o'clock in the morning of August 8th, 1923; that the said deposition of each witness was read by said witness before signing the same, except where the signature of a witness was waived, as indicated on the deposition, and except for the depositions which were stipulated as appears in this record. 3811

I am not connected by blood or marriage with either of the parties hereto, or interested either directly or indirectly in the matter in controversy.

I also certify that I have been paid my fees as Special Examiner and for copies made, in accordance with the attached bill, amounting to \$ 3812

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal, this day of 1923.

HERBERT J. KRAUSE,
Notary Public,
My commission expires
February 1st, 1926.

3814

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Beech-Nut Packing Company,

Plaintiff.

vs.

P. Lorillard Co.,

Defendant.

In Equity

No. 3056

CERTIFICATE.

3815 State of Connecticut }
 County of New Haven } ss.:

3816

I, HERBERT J. KRAUSE, a Notary Public in and for the State of Connecticut, acting as Special Examiner by consent of counsel, do hereby certify that the foregoing stipulations as to the testimony of B. T. Miller, Max Seltzer, Arthur Lennox, Morris Stein, H. Clymer, B. H. Pierce, I. Kaufman, C. R. Densmore, E. F. Killian, T. White, William Foster, Gus Steinmeyer, William Molumphy, R. F. Stahl, Agnes R. McKay, A. Wolinsky, Sam Sukloff, Jr., C. C. Gillespie, Isadore Tagum, Harry Silverman, Mrs. N. Frantz, Meyer Levine, John K. Stevenson, William Silver, Trace Caldwell, L. Wolfson, Josephine Garbarino, — Testivo, William Doll, W. J. Costello, A. B. Welsh, William P. Smith, Ernest Rankin, Nathaniel Ohm, E. Merkin, William Silverman, John H. Eckler, Jr., Henry Schwartz, A. H. Gotch, Mrs. N. Fineson, James P. Sheehan, A. M. Seligson, W. A. Clark and C. F. Tarlov, were taken on behalf of the defendant, P. Lorillard Co., pursuant to notice and agreement before me, at Hartford and New Haven, Connecticut, on August 6th, 7th and 8th, 1923; that said stipulated depositions of said witnesses were

HERBERT J. KRAUSE.

1273

taken down in shorthand by me at the joint dictation of the counsel of the parties hereto and thereafter reduced to typewriting by me; that the plaintiff, the Beech-Nut Packing Company, was represented by its counsel, H. McClure Johnson and Charles C. Bulkley, and that the defendant, P. Lorillard Co., was represented by its counsel, Richard B. Cavanagh and Thomas L. Preston; that the aforesaid counsel for the respective parties agreed to stipulate the said testimony of the said witnesses; that the counsel of both parties read over and approved and agreed to the stipulated testimony after it was written out. 3817

I am not connected by blood or marriage with either of the parties hereto, or interested either directly or indirectly in the matter in controversy. 3818

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal, this day of 1923.

HERBERT J. KRAUSE,

Notary Public.

My Commission expires

February 1st, 1926.

3819